

# **LOCAL GOVERNMENT AMENDMENT BILL 2002**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the legislation**

The Bill provides for amendments to the *Local Government Act 1993* (LGA) to:

- establish a new procedure for initiating the review of internal local government electoral boundaries; and
- change the local government electoral procedures to facilitate the effective conduct of local government elections.

#### **Reasons for the Bill**

The Department regularly evaluates the workability of the LGA's electoral provisions to ensure it remains an up-to-date legislative framework that provides for an efficient, effective, and accountable local government system.

Following the March 2000 local government quadrennial elections, a discussion paper was circulated among all local governments, peak bodies and others with an interest in the local government system. The paper was designed to provide the basis for public consultation and to stimulate discussion. A number of issues emerged, some of which did not require legislative change and were resolved through administrative action. Other issues are to receive further consideration and it is not proposed that they be resolved by means of legislation amendment at this time.

Legislative amendments have been developed to establish a new procedure for initiating the review of internal local government electoral boundaries, and to change the local government electoral procedures to facilitate the effective conduct of local government elections.

## **Achievement of the policy objectives**

### **Procedure for initiating a review of internal local government electoral boundaries**

In order to reflect the principle of one-vote, one-value, each electoral division of a divided local government area (including the City of Brisbane) must remain within an acceptable margin of allowance of the quota of electors required to elect a councillor. Procedures under the current law for giving effect to this requirement can trigger frequent redistributions if the divided local government areas have uneven patterns of population change.

Any system for triggering redistributions must continue to be based on the one-vote, one-value principle. However, there is a case for local government divisional arrangements that are developed consistently with the one-vote, one-value principle to be retained for two local government terms, that is, for eight years.

The Bill establishes a new procedure for initiating a review of internal local government electoral boundaries (including ward boundaries in the City of Brisbane) based on the approach applied at the State level for redistributions of State electoral boundaries under the *Electoral Act 1992* (EA). The new model introduces an eight-year revolving cycle. The redistributions that occurred for the March 2000 local government elections are taken to be the start of this new process. At the four-year point in the cycle (that is, after one local government term) one third or more divisions within a local government area must be outside the margin of allowance before a redistribution is triggered. At the eight-year point in the cycle (that is, after two local government terms) if any one division is outside the margin of allowance a redistribution is triggered. The cycle will then repeat, so that the one third rule will apply for the 2004 local government elections, the one division or more rule for the 2008 elections, the one third rule for the 2012 elections and the one division or more for the 2016 elections and so on.

The Electoral Commission of Queensland has indicated it considers the proposal workable and an appropriate way of adapting the principles of the EA model to the local government context.

## **Changes to the electoral procedures to facilitate the effective conduct of local government elections**

### *The method for resolution of a tied vote for candidates*

Under the current law, a tied vote at a local government election (other than for Brisbane City Council) is resolved by the returning officer (RO) exercising a casting vote. The procedure is designed to settle the matter as soon as possible to enable the newly elected council to take office. Under the LGA, a newly elected council cannot take office until all election results have been declared.

The LGA does not provide guidance on how the casting vote should be determined. Consequently, some ROs make a deliberative vote while others have determined the successful candidate by drawing lots.

The amendment provides for resolution of a tied vote by drawing lots.

### *Applying for and making declaration votes before polling day*

Although the LGA provides that voters can make a declaration vote before polling day at any place the RO decides, currently they can only apply for a declaration vote at the public office of the local government. The amendment enables voters to apply for, and make, a declaration vote at any place the RO decides.

## **Ability for ROs who are electors to vote in local government elections**

Section 334(2) of the LGA prohibits an RO who is also an elector from voting in a local government election. The amendment to the method for the resolution of tied votes provides that a tied vote must be resolved by drawing lots rather than the RO exercising a casting vote. Consequently, ROs will not be required to exercise a deliberative vote and there is no reason why ROs who are electors should not vote in local government elections.

## **Alternatives to the Bill**

There are no alternatives considered appropriate for achieving these policy objectives.

**Estimated cost of implementation**

The costs to Government of implementing the provisions of the Bill will be administrative in nature and will not be significant. Costs will be met within existing budgetary allocations.

The new procedures for initiating the review of internal local government electoral boundaries could result in some savings for the State Government if the result is a reduction in the number of redistributions to be undertaken by Local Government Electoral and Boundaries Review Commissions.

**Consistency with fundamental legislative principles**

The Bill does not infringe fundamental legislative principles.

**Consultation**

In June 2000, a Departmental discussion paper inviting comment on several electoral issues was released to all local governments, peak bodies and others with an interest in the local government system. After submissions in response to the issues covered in the discussion paper were assessed, legislative amendments in relation to some issues were developed in a draft *Local Government Amendment Bill 2002*.

Consultation was undertaken on all provisions of the Bill with relevant State agencies, including:

- Department of Justice and Attorney-General
- Department of the Premier and Cabinet
- Electoral Commission of Queensland
- Office of the Queensland Parliamentary Counsel
- Department of Primary Industries (Office of Rural Communities)
- Department of Employment and Training (Employment Taskforce)
- Treasury Department
- Ministerial Policy Committee

Local government representative bodies, relevant local governments, relevant professional associations, community groups and members of the public were also consulted.

These people and organisations were again invited to comment in April 2002 when the Department released a consultation kit inviting public comment on the provisions of the draft Bill. Widespread publicity about where to find the information and how to respond to it was disseminated on the internet, by e-mail, post and advertisement in *The Courier Mail*.

The following people and organisations were sent the consultation kit, comprising a consultation paper and the draft *Local Government Amendment Bill 2002*:

- Chief executive officers of councils
- Members of State Parliament
- Executive Director, Local Government Managers Association
- Executive Director, Local Government Association of Queensland (LGAQ)
- Office of the Ombudsman
- Councils clerks, Aboriginal Community Councils
- Registered officer, Liberal Party of Australia (Queensland Division)
- Registered officer, Australian Labor Party (State of Queensland)
- Registered officer, Australian Democrats (Queensland Division)
- Registered officer, City Country Alliance, Queensland
- Key Centre for Ethic, Law, Justice and Governance, Griffith University
- School of Management, Queensland University of Technology
- School of Management, University of Queensland
- Executive Director, Aboriginal Co-ordinating Council
- Secretary, Island Co-ordinating Council
- Electoral Commission of Queensland
- Department of Justice and Attorney-General
- Department of the Premier and Cabinet
- Legal, Constitutional and Administrative Review Committee
- Department of Aboriginal and Torres Strait Islander Policy

A total of 23 submissions were received in response to the consultation kit. Of these, 15 were from councils (including a submission from the Lord Mayor of Brisbane), five were from Members of State Parliament, and the remaining three were from the LGAQ, the Redland Senior Action Group, and a local government consultant and experienced returning officer.

While responses have confirmed there is general support for the provisions of the Bill, including resolution of a tied vote by drawing lots, one suggestion from experienced ROs was for the draw to resolve a tied vote to be conducted by means of coloured or numbered balls.

The draft Bill released for public comment provides that the draw be conducted by the use of identical envelopes marked with the candidates' names. It was suggested that the perceived impartiality of the process would be enhanced by requiring the use of numbered or coloured balls.

Consultation with associated agencies supported making this adjustment to the process. The following departments and agencies were consulted:

- Electoral Commission of Queensland
- Department of Justice and Attorney-General
- Department of the Premier and Cabinet
- Office of the Queensland Parliamentary Counsel

The Office of the Queensland Parliamentary Counsel (OPC) revised the relevant provisions of the draft Bill.

The consultation process indicated that all the provisions of the Bill had widespread support from local governments, peak bodies and others with an interest in the local government system.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### **Clause 1—Short title**

*Clause 1* of the draft Bill provides the short title of the proposed Act is the *Local Government Amendment Act 2002*.

**Clause 2—Commencement**

*Clause 2* provides that the proposed Act will amend the *Local Government Act 1993*.

**Clause 3—Replacement of s 284 (Application of part to Brisbane City Council)**

*Clause 3* makes a number of changes to the structure of chapter 5 part 5 of the LGA. The part has been separated into divisions and a heading for division 1 has been inserted immediately before the heading for section 284. Division 1 (Preliminary) is now made up of section 284 (which is replaced unchanged) and a new section 284A.

Section 284A contains the definition of “information date” for part 5. The definition is unchanged. It was previously contained in section 288(4), but since the term is used elsewhere in part 5, it needs to be defined for the purpose of the whole part, not only for section 288.

Clause 3 also inserts a heading for division 2 (Quota requirements for divided local governments) after section 284A.

**Clause 4—Amendment of s 288 (Matter of area’s division referred to commissioner)**

*Clause 4* contains the main amendments to establish the proposed eight-year cycle for initiating local government electoral boundary redistributions. This is achieved by amendments to section 288.

The proposed new subsection (1) provides that at the four-year point in the cycle (which will initially be the information dates for the 2004 quadrennial elections), the Minister must initiate an electoral boundary redistribution if one-third or more of a local government’s electoral divisions (or in the case of Brisbane City Council, wards) exceed the margin of allowance.

In applying this one-third rule, the subsection provides that for local government areas with less than six divisions, a redistribution must occur if two or more divisions exceed the margin of allowance.

The proposed new subsection (1) also provides that at the eight-year point in the cycle (which will initially be the information dates for the 2008 quadrennial elections), the Minister must initiate an electoral boundary

redistribution if one or more of a local government's divisions (or in the case of Brisbane City Council, wards) exceed the margin of allowance.

In addition, clause 4 inserts a new subsection (2A), which sets out how to deal with local government areas which have a total number of divisions that is not a multiple of three in applying the one-third rule at the four-year point in the eight-year cycle. The rule is that if the number is not a multiple of three, the next lower number that is a multiple of three is taken to be the total number of divisions.

Examples—

1. If a local government area has 7 divisions, the next lower number that is divisible by 3 is 6. One-third of 6 is 2. Therefore, if the local government area has 2 or more divisions out of quota, a reference by the Minister will be required.

2. If a local government area has 10 or 11 divisions, the next lower number that is divisible by 3 is 9. One-third of 9 is 3. Therefore, if the local government area has 3 or more divisions out of quota, a reference by the Minister will be required.

#### **Clause 5—Amendment of s 334 (Who may vote)**

*Clause 5* repeals section 334(2), (the prohibition on ROs voting) thus enabling ROs to vote if they are also enrolled as electors.

#### **Clause 6—Amendment of s 352 (Declaration voting before polling day)**

*Clause 6* amends section 352 to extend the places at which it is possible to apply for a declaration vote. The amendment permits electors both to apply for and cast a declaration vote at the same place.

#### **Clause 7—Amendment of s 368 (Counting of votes for optional-preferential system)**

*Clause 7* amends section 368 to specify that a tied vote in a poll conducted under the optional-preferential system of voting must be resolved by drawing a lot. It also sets out the procedure for drawing a lot.

#### **Clause 8—Amendment of s 369 (Counting of votes for first-past-the-post system)**

*Clause 8* amends section 369 to specify that a tied vote in a poll conducted under the first-past-the-post system of voting must be resolved by drawing a lot. It also sets out the procedure for drawing a lot.

**Schedule—Minor and consequential amendments**

The schedule contains a number of machinery changes in relation to the electoral amendments and other matters.

**Clause 1**

Clause 1 corrects a provision reference in section 141(d)(ii).

**Clause 2**

Clause 2 inserts a division heading in part 5, as a consequence of the new structure of part 5 necessitated by the amendments at clauses 3 and 4 above.

**Clause 3**

Clause 3 omits from section 287(4) the definition of “information date” now contained in section 284A.

**Clause 4**

Clause 4 updates a reference to the Commonwealth Electoral Act in section 343(g)(ii).

**Clause 5**

Clause 5 inserts a definition for “local law” into section 1193D(6).

**Clause 6**

Clause 6 replaces a conjunctive with a disjunctive at the end of section 1193H(1)(a)(ii).

**Clause 7**

Clause 7 inserts a signpost in the dictionary schedule to the definition of “information date” inserted into section 284A.