

Local Government and Other Legislation Amendment Bill (No. 2) 2015

Explanatory Notes

Short title

The short title of the Bill is the Local Government and Other Legislation Amendment Bill (No. 2) 2015.

Policy objectives and the reasons for them

City of Brisbane Act 2010 and the *Local Government Act 2009*

The *City of Brisbane Act 2010* (COBA) section 92D and the *Local Government Act 2009* (LGA) section 90D prohibit a local government from publishing or distributing election material during the caretaker period for a local government election. The *Local Government Electoral Act 2011* (LGEA) section 179 requires accepted how-to-vote cards to be available for public inspection at the place of nomination, the local government's public office and on the electoral commission's website.

Under the LGEA, the electoral commission accepts how-to-vote cards if satisfied that the cards are unlikely to mislead or deceive an elector in voting and comply with certain administrative requirements.

The Bill amends the COBA/LGA to correct the inconsistency with the LGEA by permitting an accepted how-to-vote card to be available for inspection at the local government's public office during the caretaker period for a local government election.

Local Government Electoral Act 2011

The Bill also makes a minor amendment to the LGEA to repeal an obsolete reference to mayoral first-past-the-post voting as a consequence of the change made on 1 January 2015 to the voting system for mayors in undivided local governments from first-past-the-post to optional-preferential voting.

Sustainable Planning Act 2009

The *Sustainable Planning Act 2009* (SPA) requires a local government that intends to levy an infrastructure charge to include a Local Government Infrastructure Plan (LGIP) in its planning scheme by 30 June 2016. SPA also requires an Infrastructure Charges Notice (ICN) issued by a local government to include information about any offset or refund that may apply.

However, many local governments have advised that they will not be in a position to prepare an LGIP by 30 June 2016 and so would not be able to impose charges on a development approval after this date. This may result in the local governments delaying

or avoiding approving development applications that would have otherwise attracted significant charges. The Bill provides local governments with a further two years to have an LGIP in place if they have received the Planning Minister's approval for the extension. The Bill requires local governments to justify their ability to meet the extended timeframe. The Bill has no impact on those local governments with an LGIP in place by 30 June 2016.

The requirement for an ICN to include information about any offset or refund that may apply has been effective in encouraging local governments to take proper account of the trunk infrastructure being delivered by the developer when the local government determines the appropriate charge. It has also provided applicants with certainty in relation to the value of their contribution to the cost of providing the trunk infrastructure. However, where the offset or refund is large enough to necessitate the approval of the local government's budget committee, this takes a considerable period of time to obtain, resulting in delays in development approvals. The current arrangement does not allow for an applicant who is either unconcerned about the prospect of an offset or refund, or is prepared to receive information about these matters at a later time, to advise the local government that they are not seeking information about an offset or refund in an ICN. The Bill allows an applicant to do so.

South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

The *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act) requires an ICN to include information about any offset or refund that may apply. The information in the ICN has provided water connection applicants with greater clarity and certainty around offsets and refunds for trunk infrastructure they may be required to provide. The information in the ICN also ensures the distributor-retailers properly account for trunk infrastructure that is conditioned on a water connection approval.

A large development however, may face delays in receiving a connection approval and ICN due to an offset or refund being of a magnitude that it requires specific budget approval within the distributor-retailer. However, an applicant may be unconcerned (at the time of approval) about the prospect of an offset or refund, or is prepared to receive information about these matters at a later time. The current arrangement does not allow an applicant to provide the distributor-retailer with advice that the applicant is not seeking offset or refund information in an ICN.

Achievement of policy objectives

To achieve the policy objectives, the Bill amends the:

- COBA and the LGA to enable a local government to make accepted how-to-vote cards available for inspection at the local government's public office during a caretaker period for the local government, consistent with the LGEA
- LGEA to remove an obsolete reference to mayoral first-past-the-post voting
- SPA to allow local governments to request an extension to have an LGIP in place and to allow development applicants to advise local governments that they are not seeking information about an offset or refund in an ICN
- SEQ Water Act to allow applicants for a connection approval the ability to advise a distributor-retailer that the applicant is not seeking information about an offset or refund in an ICN.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by legislative amendment.

Estimated cost for government implementation

There are no estimated costs for government arising from the Bill.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs) as required under the *Legislative Standards Act 1992*. Potential breaches of FLPs are addressed below.

Individuals' rights and liberties

Retrospectivity

Clause 18 of the Bill inserts new section 998 into the SPA. The new provision is a validation provision that has a retrospective effect and corrects a conflict between an existing transitional provision and a substantive provision of SPA. This section is a necessary inclusion for the effective continued operation of transitional provisions to ensure normal business continues.

Infrastructure planning and charges framework amendments to the SPA were introduced through the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014* and commenced on 4 July 2014. In that version of the SPA, section 979(4) to (8) provides for local government infrastructure charges resolutions to include "saved provisions" to identify trunk infrastructure, desired standards of service and associated infrastructure costs in the situation where the local government has not yet adopted a LGIP. When a local government adopts an LGIP in its planning scheme, it supersedes the provisions under section 979 subsections (4) to (8). In this version of the SPA, section 979(5) allowed for an "existing" local government infrastructure charges resolution to include "saved provisions" until 1 July 2016 which was the deadline for local governments to adopt an LGIP in their planning schemes.

A subsequent SPA amendment to section 979(5) (introduced through the *Queensland Heritage and Other Legislation Amendment Bill 2014* in October 2014) amended the date from 1 July 2016 to 1 July 2015. The same Bill also introduced new section 628A which had the effect that a local government cannot levy infrastructure charges or impose conditions about trunk infrastructure, unless it has an adopted LGIP in its planning scheme.

Review of these sections as part of the drafting of the Bill has identified that a local government infrastructure charges resolution that has been prepared after the commencement of new section 628A, may not be valid. In clause 18 of the Bill, the new section 998 is introduced to resolve, with retrospective effect, the conflict between an existing transitional provision and a substantive provision of SPA.

The relevant provisions would apply in situations where local governments have been assessing development applications and imposing infrastructure charges and conditions on development approvals, based on an infrastructure charges resolution created under section 979(4) to (8), after October 2014. The main stakeholders in this regard are local governments and relevant developers. The impact of the retrospective application of provisions under clause 18, new section 998 is limited to ensuring that normal business continues under the transitional provisions as intended.

Consultation

In early August 2015, a draft exposure Bill incorporating the proposed amendments to the COBA, LGA and LGEA was released for targeted consultation with the Local Government Association of Queensland (LGAQ), the Local Government Managers Australia (Queensland) and the Electoral Commission of Queensland.

The proposed extension to the timeframe to adopt a LGIP and the opportunity for development applicants to advise local governments that they are not seeking information about an offset or refund in the ICN is supported by the LGAQ and the Infrastructure Charges Working Group.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that when enacted, the Bill may be cited as the *Local Government and Other Legislation Amendment Act (No. 2) 2015*.

Part 2 Amendment of City of Brisbane Act 2010

Clause 2 Act amended

Clause 2 provides that part 2 amends the *City of Brisbane Act 2010*.

Clause 3 Amendment of s 92D (Prohibition on election material in caretaker period)

Clause 3 inserts new section 92D(3) to prevent the prohibition on the council from publishing or distributing election material during the caretaker period from applying to an accepted how-to vote card.

Under section 179 of the *Local Government Electoral Act 2011* (LGEA) the electoral commission is responsible for accepting or rejecting how-to-vote cards. The electoral commission accepts how-to-vote cards if satisfied that the cards are unlikely to mislead or deceive an elector in voting and comply with certain administrative requirements.

The LGEA section 179(6) provides that before polling day, a returning officer must ensure an accepted how-to-vote card is available for public inspection at the place of nomination, the local government's public office (if not also the place of nomination), and on the electoral commission's website.

The *City of Brisbane Act 2010* (COBA) section 92D prohibits council from publishing or distributing election material during the caretaker period for a council election. Election material is defined in section 92D(2) to mean anything able to, or intended to influence an elector about voting at an election; or affect the result of an election.

Without amendment, an accepted how-to-vote card falls under the definition of election material in the COBA section 92D making it inconsistent with the LGEA section 179.

Part 3 Amendment of Local Government Act 2009

Clause 4 Act amended

Clause 4 provides that part 3 amends the *Local Government Act 2009*.

Clause 5 Amendment of s 90D (Prohibition on election material in caretaker period)

Clause 5 inserts new section 90D(3) to prevent the prohibition on local governments from publishing or distributing election material during the caretaker period from applying to an accepted how-to vote card.

Under section 179 of the *Local Government Electoral Act 2011* (LGEA) the electoral commission is responsible for accepting or rejecting how-to-vote cards. The electoral commission accepts how-to-vote cards if satisfied that the cards are unlikely to mislead or deceive an elector in voting and comply with certain administrative requirements.

The LGEA section 179(6) provides that before polling day, a returning officer must ensure an accepted how-to-vote card is available for public inspection at the place of nomination, the local government's public office (if not also the place of nomination), and on the electoral commission's website.

The *Local Government Act 2009* (LGA) section 90D prohibits councils from publishing or distributing election material during the caretaker period for a council election. Election material is defined in section 90D(2) to mean anything able to, or intended to influence an elector about voting at an election; or affect the result of an election.

Without amendment, an accepted how-to-vote card falls under the definition of election material in the LGA section 90D making the section inconsistent with the LGEA section 179.

Part 4 Amendment of Local Government Electoral Act 2011

Clause 6 Act amended

Clause 6 provides that part 4 amends the *Local Government Electoral Act 2011*.

Clause 7 Amendment of s 84 (How electors must record a vote on a ballot paper—first-past-the-post voting)

Clause 7 omits section 84(2) and amends section 84(3) to remove the obsolete reference to mayoral first-past-the-post voting as a consequence of the voting system for mayors changing on 1 January 2015 from first-past-the-post to optional-preferential voting, consistent with the method of voting for members of the Queensland Parliament.

Part 5 Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Clause 8 Act amended

Clause 8 provides that part 5 amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Clause 9 Amendment of s 99BRCK (Requirements for infrastructure charges notice)

Clause 9 inserts a new subsection (1A) to create an exception to the requirements of subsection 99BRCK(1)(f). Where an applicant does not need information about an offset or refund at the time of the connection approval, the applicant may request the distributor-retailer to issue an infrastructure charges notice without the required information about offsets and refunds. The result will be that the developer and distributor-retailer will have to resolve the outcome of issues regarding offsets and refunds subsequent to the connection approval being finalised. The request may be part of the connection application form, or a letter from the applicant to the distributor-retailer.

Part 6 Amendment of Sustainable Planning Act 2009

Clause 10 Act amended

Clause 10 provides that part 6 amends the *Sustainable Planning Act 2009*.

Clause 11 Amendment of s 637 (Requirements for infrastructure charges notice)

Clause 11 inserts new subsection (1A) to create an exception to the requirements of subsection 637(1)(f) of the SPA. Where an applicant does not need information about an offset or refund at the time of the development approval, the applicant may request the local government to issue an infrastructure charges notice without the required information about offsets and refunds. The result will be that the developer and local government will have to resolve the outcome of issues regarding offsets and refunds subsequent to the development approval being finalised. The request may be part of the development application form, or a letter from the applicant to the local government.

Clause 12 Amendment of s 975 (Definitions for pt 11)

Clause 12 amends section 975 by inserting a definition for *cut-off date*.

Clause 13 Insertion of new s 975A Cut-off date for particular local governments

Clause 13 inserts new section 975A to clarify when the cut-off date applies for different circumstances.

Clause 14 Amendment of s 979 (Charges resolutions until 1 July 2016)

Clause 14 amends section 979 of the SPA to allow for the possible extension of the deadline that applies to a “saved provision” that is relevant to a local government infrastructure charges resolution. Where a planning scheme does not include an LGIP, the local government infrastructure charges resolution may continue to identify trunk infrastructure, associated establishment costs and desired standards of service (saved provisions) until the cut-off date. This arrangement is allowed until the cut-off date despite the fact that the local government does not have an LGIP as required under section 628A, and despite the limitations under sections 630 and 631.

Clause 15 Amendment of s 982 (PIP to LGIP)

Clause 15 amends section 982 of the SPA to allow for the possible extension of the deadline to adopt an LGIP that complies with the requirements of the statutory guidelines provided for under section 117(2).

Clause 16 Amendment of s 983 (Existing SPRP for adopted charges)

Clause 16 amends section 983 of the SPA to align it with amendments which provide for the possible extension of the deadline for local governments to adopt a complying LGIP in their planning schemes. Where a local government does not have an adopted LGIP, the PIA for the local government area is identified under the SPRP (adopted charges). Once an LGIP is adopted, its PIA supersedes the PIA identified under the SPRP (adopted charges).

Clause 17 Amendment of s 996 (Provision for planning schemes in effect before 4 July 2014 that do not include an LGIP or PIP)

Clause 17 amends and clarifies section 996 of the SPA to align it with amendments which provide for the possible extension of the deadline for local governments to adopt a complying LGIP in their planning schemes. Local governments that do not have an adopted LGIP in their planning schemes will not be able to levy infrastructure charges or impose conditions about trunk infrastructure after the cut-off date.

Clause 18 Insertion of new ch 10, pt 14

Clause 18 inserts new section 997 to provide for the Minister to consider and grant a possible extension of the deadline (cut-off date) for a local government to adopt a complying LGIP in its planning scheme. The current deadline of 1 July 2016 is not automatically extended. After making a formal council resolution in this regard, a local government that is interested in having the deadline extended, must submit its written request to the Minister. The request must include the necessary information (e.g. evidence of the resolution, project plan identifying steps and time-frames) to enable the Minister to make an informed decision in this regard and also demonstrate the local government's commitment to adopt its LGIP within the requested time-frame. The Minister must consider the application and decide to grant or refuse the application for an extension of time and within 20 business days inform the local government of the decision. However, if the Minister does not inform the local government within this time-frame, the local government is taken to have been granted an extension of time. Any extension of time must end before 1 July 2018.

Clause 18 also inserts new section 998 to ensure that any adopted infrastructure charges resolution made by a local government after the commencement of section 628A and up to the commencement of new section 998, is a valid adopted infrastructure charges resolution.