Speech by

Hon. T. M. MACKENROTH

MEMBER FOR CHATSWORTH

Hansard 29 April 1999

LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL

Hon. T. M. MACKENROTH (Chatsworth— ALP) (Minister for Communication and Information and Minister for Local Government, Planning, Regional and Rural Communities) (11.31 a.m.): I move—

"That the Bill be now read a second time."

I introduce the Local Government and Other Legislation Amendment Bill 1999. There are two main objectives of the Bill. The first is to clarify or improve the workability of provisions in the Local Government Act 1993 and the City of Brisbane Act 1924 dealing with rates and charges. The second is to improve the framework in the Local Government Act 1993 for the local law-making process, the conduct of elections and the disclosure of election gifts.

The Bill also contains a number of amendments to the City of Brisbane Act 1924, including provision for the Brisbane City Council to arrange for the Electoral Commission of Queensland to take responsibility for the conduct of council elections. In addition, the Bill contains miscellaneous amendments to the Local Government Act 1993. The Bill also deals with sunset provisions in the Local Government (Aboriginal Lands) Act 1978 and includes a clarifying amendment to the Fire and Rescue Authority Act 1990.

The Bill contains minor amendments to the National Competition Policy—NCP— framework for local government, including a one-year extension to the transitional provisions for exercise of statutory powers by local government owned corporations— LGOCs. The existing transitional provisions were inserted to provide LGOCs with scope to exercise statutory powers where necessary in the provision of infrastructure services such as water and sewerage. These provisions were a stopgap measure until more permanent arrangements could be made.

Draft legislative proposals dealing with this issue and the possible extension of the corporatisation framework for local government were released for public comment in December 1998. However, as a result of a number of concerns raised, the draft legislation has not been included in this Bill. An extension of the existing transitional provisions is therefore needed to provide adequate time to address the issues that have arisen. This should not present any problems, because no council has corporatised a business activity as a part of applying National Competition Policy. A small number of councils have indicated they would be prepared to consider corporatisation after the Commonwealth has resolved the issue of the application of its taxes to LGOCs. Recently, I forwarded cheques to 102 councils totalling $26.5m from the $150m NCP financial incentive package for local government. These payments were made in recognition of the progress councils have made in applying the reforms.

When I was the Minister responsible for local government in 1995, I took action to ensure the application of NCP to local government would fit Queensland circumstances and our local government system. This approach built on the directions in the Local Government Act 1993 which gave councils the autonomy to make decisions that are in the best interests of their communities balanced with accountability for the exercise of this autonomy. In the NCP context, this meant giving councils the scope to decide whether to apply the reforms after they carry out public benefit assessments to ascertain whether there is a benefit for their communities.

Most councils have been responsible in the way they have approached the application of NCP. They have used the flexibility to implement the reforms in ways that should generate local benefits.

However, I have concerns about the behaviour of a handful of councils which are sending misleading messages to their communities. Some councils are looking at retrenching staff and have claimed this is being forced upon them by NCP and the State Government. Clearly, this is not the case. These councils have consciously made the decision to reform their activities. In fact, the public benefit assessments they had to undertake before making this decision required them to consider the impact on employment.

Other councils have been saying to their employees that NCP requires them to contract out the provision of services and that, again, this is being forced on them by the State Government. Let me make it clear: when the NCP reforms were first adopted, councils were advised on a number of occasions that NCP did not require contracting out or the privatisation of council services. This is still the case. It is quite wrong of councils to frighten their staff and mislead their communities in this way. Obviously, these councils want to change their operations but want the blame laid at the feet of others.

Councils that are not open and honest with these sorts of decisions reinforce public scepticism and cynicism and undermine our whole system of local government. To ensure the process is open and transparent I intend reviewing the public benefit assessment requirements under the Local Government Act 1993 to make sure the assessment process used by councils adequately takes into account the broader community interest, particularly the impact of reform on jobs.

Mr Speaker, I seek leave to incorporate the explanation of the other amendments in Hansard.

Leave granted.

Rating and charging amendments

A number of the rating amendments relate to the special rates and charges provisions in the Local Government Act 1993.

The Ombudsman has reported there have been a number of cases where complainants have questioned the validity of the special rate or charge levied by their local governments. Following an investigation of these complaints, they were upheld by the Ombudsman.

Some of the errors resulted from the local governments raising revenue in a manner which, though reasonable in terms of public policy, was not necessarily consistent with the powers available in the legislation.

While the Bill will not deal with these issues retrospectively, it will clarify the relevant provisions and provide a greater scope for those councils that wish to use these rates or charges to raise revenue.

The Bill requires a local government to set out in an overall plan the basis for its decision to levy a special rate or charge on land in part of its area.

Unless the overall plan is being fully implemented in the same financial year for which the special rate or charge is made, the local government would also have to draw up an annual implementation plan to show the link between proposed revenue and expenditure for the year and the overall plan.

These amendments help to deal with the uncertainty in the current law of special rates and charges being levied for a number of years and the timing of when properties might benefit from the relevant services or activities funded from the revenue raised.

For example, a council might levy a special charge to cover the cost of undertaking a road works program in part of its area over a ten year period.

Land within the area could receive a benefit from the road works at different times during that ten year period.

Provisions have also been included in the Bill dealing with the carrying forward of monies unexpended in a particular year and their disposal if the overall plan is fully implemented.

Currently, a special rate or charge can only be levied where it is considered the land itself has or will receive a special benefit from the service or activity.

The Bill will broaden the scope for using a special rate or charge to enable it to be applied—

if the occupier of the land has or will receive a benefit; or

if the owner or occupier of the land contributes or will contribute to the need for the service or activity.

These provisions take effect immediately, but local governments will have a choice of making and levying special rates and charges under the current provisions for their 1999/2000 budgets.

The new provisions will apply to all special rates and charges made and levied by councils thereafter.

The Bill also amends the Fire and Rescue Authority Act 1990 by clarifying that the Brisbane City Council may make and levy separate rates and charges under the City of Brisbane Act 1924 for the purpose of contributing amounts raised to a rural fire brigade operating in the city.

The remaining rating and charging provisions in the Bill apply to all local governments and consist of amendments to the Local Government Act 1993 and the City of Brisbane Act 1924.

In 1997, the Valuation of Land Act 1944 was amended to provide for a separate valuation to be issued for each lot of newly subdivided land and for this valuation to be discounted for rating purposes until it is first sold by the developer or until the end of the financial year after the year the subdivision occurs.

This amendment resulted from an agreement between the Local Government Association of Queensland and the Urban Development Institute of Australia.

However, it was not intended the effect of the discounted valuation could be overcome by applying a minimum general rate levy.

Accordingly, the Bill includes an amendment to clarify that a minimum general rate levy does not apply to any parcel of land to which section 25 of the Valuation of Land Act 1944 applies.

The Bill also clarifies information that may be included on a rate notice.

It is permissible for Local Governments to include non-rates items on the rate notice, such as outstanding licence fees.

In some cases, however, the notice does not indicate these other items are not rates and are therefore not subject to the same payment conditions as rates.

Accordingly, the Bill clarifies that non-rate items may be included in a rate notice provided they are identified as such and the rate notice makes it clear that non-payment of these items does not affect discount on rates. This requirement will come into effect from 1 July 2000 to enable local governments sufficient time to adjust their rating systems.

Local governments will also have greater flexibility in their discounting practices as a result of amendments in the Bill.

Currently, the legislation provides that local governments may offer a discount if rates are paid within 30 days, or 60 days as the case may be, from the date of issue of the rate notice.

Discounts must be by way of a fixed percentage.

The Bill provides that a discount may be allowed on a rate if the rate is paid by the discount date for the rate.

That date must be at least 30 days after the rate notice is issued and be the same date for each person liable to pay the rate.

It is up to the local government to determine the discount to be offered and a different discount may apply in respect of a rate where the local government decides more than one discount date and specifies a different discount for each discount date.

If emergency situations arise, such as occurred with the recent flooding in North Queensland, it may be difficult for a large number of ratepayers to pay their rates within the specified discount period. This would result in the loss of discount through no fault of their own. Therefore, the Bill allows a local government to alter the discount date to allow each person liable to pay a rate a greater period of time to do so.

The Bill also contains amendments to the procedures for sale of land for overdue rates.

The legislation currently provides that if land is sold at public auction for overdue rates, the reserve price must be set at whichever is the greater of the unimproved value of the land or the overdue rates.

If the land is not sold at auction, the local government is deemed to have bought the land for the reserve price.

Problems have arisen where the unimproved value of the land is substantially greater than its current market value.

Setting the reserve price at the unimproved value can mean the local government has to purchase the property at a price that does not reflect market value.

The Bill will allow councils to continue to use the current method of setting the reserve price, but provides scope for councils to use the market value of the land as the reserve price.

The market value is determined by obtaining valuations from two independent valuers and selecting the higher of the two to set the reserve price.

It is at a council's discretion whether it uses the current approach or obtains and uses the market value as the reserve price.

Amendments to the local law making process

The Bill contains a number of amendments to the process under the Local Government Act 1993 for the making of local laws. These amendments have arisen from an evaluation of the local law making process that was undertaken last year.

One of the main issues raised in the evaluation was the standard of drafting in the development of local laws by councils.

The standards for local law making were also considered in a recent report on individual rights and freedoms in Queensland by the Legislative Assembly's Legal, Constitutional and Administrative Review Committee.

Among other things, the Committee noted that unlike State legislation, local laws are currently not required to comply with fundamental legislative principles set out in the Legislative Standards Act 1992.

Although the Local Government Act 1993 does not set standards for drafting local laws, advice is provided to councils on drafting techniques and processes through a manual on making local laws.

This manual is advisory in nature.

Accordingly, the Bill provides for a regulation to be made to set drafting standards for local laws including the application of the fundamental legislative principles in the Legislative Standards Act 1992.

The Bill also contains a requirement for a local government to lodge a compliance certificate as a part of the State interest check certifying that the proposed local law has been drafted in accordance with the standards.

These requirements will commence on 1 January 2000 to allow the standard to be developed and to provide time for appropriate training for those involved in the local law making process.

There was also a general consensus among stakeholders of the need for regular reviews of local laws to ensure they remain valid and responsive to the changing needs of the community.

Regular reviews could also facilitate the adoption of alternatives to regulation.

Therefore, the Bill includes an ongoing review mechanism for local laws.

This mechanism involves nominating a date, approximately seven years after the legislation commences.

All local laws in existence at that date will need to be reviewed within three years or they will expire.

This cycle would then be repeated on an ongoing basis, with the review cycle to occur every ten years.

There are also a number of other procedural matters where amendments are proposed in relation to local law policies, interim local laws and model local laws.

These amendments will help to improve the workability for the local law making process for councils and the public.

Amendment to electoral provisions

The Bill contains a number of amendments to the electoral provisions in the Local Government Act 1993. The aim is to improve the workability of the electoral process for participants in local government elections.

While most of the amendments involve only minor changes, it is proposed to make 31 January in the election year as the common cut-off date for the voters rolls for triennial elections in all local government areas.

Currently, where there is a postal ballot in the whole or part of the local government area, the cut-off date for voters rolls is 31 December in the year preceding the triennial elections.

All other areas with an ordinary ballot have a cut-off date for voters rolls of 31 January.

The two cut-off dates operated for the 1994 and 1997 triennial elections meant that electors who change enrolment between 31 December and 31 January from an area with a postal ballot to an area with an ordinary ballot could be enrolled to vote in two local government areas.

Alternatively, electors who move in this period from an area with an ordinary ballot to an area with a postal ballot could be disenfranchised.

The rationale for having an earlier cut-off date for triennial elections conducted by postal ballot was to allow adequate time for posting of ballot papers.

The fixing of a common cut-off date for the closure of the rolls should not present problems for the conduct of such elections, provided triennial elections are not brought forward to early March.

The Electoral Commission of Queensland has also advised that the later time for close of rolls for postal ballot areas should not present any problems given enhanced communications systems now available to provide quick access to electoral roll information.

The Australian Electoral Commission has also indicated that a common cut-off date would make it easier to produce the voters rolls for triennial elections.

My Department will also provide information and assistance to returning officers in local government areas using postal ballots to ensure the smooth conduct of the elections.

The Bill also amends the City of Brisbane Act 1924 to enable the Brisbane City Council to arrange for the Electoral Commission of Queensland to take responsibility for the conduct of Brisbane City Council elections. Currently the Town Clerk is responsible for running the council elections.

This amendment is in response to a request from the council to provide it with more flexibility in this area.

The Electoral Commission has advised that it is prepared to take on the responsibility and conduct the Brisbane City Council triennial elections in March 2000, subject to entering into a satisfactory agreement with the council.

If the council resolves to enter into an agreement with the Electoral Commission (and agreement is reached), the elections would be conducted by the Commission on a fee for service basis.

Amendments to regime for disclosure of election gifts

The disclosure regime for donations involving local government elections was introduced in 1996 and is based on the State regime with variations to take account of the local government context.

It applied for the first time in the March 1997 triennial elections.

At the time, it was considered that an evaluation would be necessary because the variations to the State regime were untested and as the regime was not applied to the Brisbane City Council.

The Bill addresses a number of issues raised during the review of the provisions.

The most significant element is the extension of the application of the local government disclosure provisions to Brisbane City Council elections.

This will not result in any duplication or change to the disclosure requirements under State and Commonwealth legislation which currently apply to registered political parties which endorse candidates in Brisbane City Council elections, or to the associated entities of such parties.

However, the amendments mean that party-endorsed candidates at Brisbane City Council elections will have to disclose whether they have personally received and retained election gifts, in a similar way to the requirements for party-endorsed candidates at State elections.

The application of the regime to Brisbane City Council elections also means there will now be—

> disclosure by candidates not endorsed by a registered political party of whether election gifts have been received; and
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> disclosure of gifts received by third parties who spend money on electoral purposes associated with Brisbane City Council elections.

The disclosure periods for candidates for the next Brisbane City Council elections will commence no earlier than the date of assent of this legislation.

The Bill also amends the regime in relation to disclosure by successful candidates and disclosure by groups of election candidates that are not endorsed by a registered political party.

Councillors are currently required to lodge an interim disclosure return before taking office.

A final return is also required within 3 months after the end of the disclosure period which is 30 days following the conclusion of the elections.

This requirement was initially included to enhance public confidence in local government.

Requiring a return before a councillor can act in office is also a real incentive to lodge returns.

As most of the final returns were nil returns, it is proposed to streamline the process.

The Bill basically allows a councillor to treat the interim return as a final return if the return states the councillor is unlikely to receive any further gifts in the disclosure period and should further gifts be received, they will be disclosed.

An issue that arose during the conduct of the 1997 triennial elections was the disclosure requirement for gifts made to a group of candidates, where the group is not part of a registered political party.

The current legislation does not explicitly state the disclosure requirements for candidates in this situation.

This is addressed through amendments in the Bill which require each candidate in the group to disclose whether any election gifts to the candidate have been received, as well as election gifts made to the group.

This requirement will not apply to a group of candidates who have been endorsed by a registered political party, because the registered political party has to disclose these gifts under relevant State and Commonwealth laws.

Amendments to Local Government (Aboriginal Lands) Act 1978

The Local Government (Aboriginal Lands) Act 1978 provides for the declaration of places where the possession or consumption of alcohol is prohibited or controlled in the Shire of Aurukun.

It establishes a framework to achieve declarations through decisions made by the Aurukun Alcohol Law Council, a group which comprises community elders representing the recognised traditional groupings in the Shire.

The legislation provides for community participation in decision-making, enforcement and appeal mechanisms.

The provisions came into effect in December 1995 and are due to expire on 30 June 1999.

A review of the implementation and effectiveness of the provisions has been conducted.

It found that the Aurukun community has taken action to implement the legislation.

The Law Council has been operating for some time and has made decisions to declare certain public and private places in the Shire either dry or controlled areas.

Members of the community consulted during the review were strongly in favour of the continuation of a traditional decision-making body to make decisions about the control of alcohol and provision for enforcing those decisions.

Therefore, the Bill removes the sunset date to allow the legislation to continue indefinitely.

It also includes a number of minor amendments aimed at adding flexibility to the administrative framework and requires that a review of the provisions be undertaken within 3 years to assess whether they continue to be appropriate for Aurukun.

Miscellaneous amendments

The Bill also contains a number of miscellaneous amendments to the Local Government Act 1993 and the City of Brisbane Act 1924.

These include amendments to the City of Brisbane Act 1924 to enable the Brisbane City Council to use exemptions to open competition in their purchasing arrangements that are currently available to other local governments under the Local Government Act 1993.

A range of minor and consequential amendments are also being made to a number of other Acts.

In developing the Bill extensive consultation has been undertaken with a wide range of stakeholders and I want to take this opportunity to thank all those who have taken the time to comment.

The Local Government Association of Queensland has provided detailed input into the drafting of the legislation and has no objection to the proposed amendments.

I commend the Bill to the House.