Speech by

Hon. NITA CUNNINGHAM

MEMBER FOR BUNDABERG

Hansard 2 May 2001

LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL

Hon. J. I. CUNNINGHAM (Bundaberg—ALP) (Minister for Local Government and Planning) (4.55 p.m.): I move—

That the bill be now read a second time.

The Local Government and Other Legislation Amendment Bill was introduced into parliament in November last year but lapsed when parliament was prorogued. The Local Government and Other Legislation Amendment Bill 2001 (LGOLA Bill 2001) contains all the key provisions that were in the lapsed bill, with some minor changes to dates of commencement and transitional provisions. It also contains some new provisions.

The purpose of the bill is to achieve a number of objectives in the areas of national competition policy, local government electoral arrangements, provision of local government infrastructure and integrated state planning.

Firstly, the bill amends the Local Government Act 1993 (LGA) and repeals the Townsville Thuringowa Water Supply Board Act 1987 to convert the Townsville Thuringowa Water Supply Board from a state statutory authority to a new commercialised local government entity similar to a joint local government.

Secondly, the bill amends the LGA to provide that a councillor vacates local government office on becoming a candidate for election to the state or Commonwealth parliaments.

Thirdly, the bill amends the LGA to make clear that local laws or subordinate local laws purporting to prohibit or restrict the distribution of how-to-vote cards at local government or state elections have no effect.

Fourthly, the bill amends the LGA to provide a head of power to require all operators on the Kuranda rail line to pay a levy of $1 per passenger, with the funds raised to be used to assist Mareeba Shire Council in the provision of tourist infrastructure in Kuranda.

Fifthly, the bill extends by two years a sunset clause allowing councillors and council employees to comprise up to one half of the directors of local government owned corporations and extend by two years a related sunset clause for review of this provision.

Lastly, the bill amends the Integrated Planning Act 1997 (IPA) to clarify the intention of the IPA to preserve the operation of development control plans made under the repealed Local Government (Planning and Environment) Act 1990 (P&E Act), to provide interim development controls for two local governments pending implementation of planning schemes to be made under the IPA and to correct a drafting ambiguity in relation to ministerial call-in powers. The bill also makes a minor amendment to the Land Title Act 1994 to correct an oversight in the transition to the IPA.

The provisions in the bill will help with the ongoing implementation of current reform programs as they affect local governments and other statutory and industry bodies. In addition, they will contribute to maintaining public confidence in the local government system. They will also help the Mareeba Shire Council provide infrastructure to cater for tourism development in the town of Kuranda.

I will outline the components of the bill in the order in which they are presented. Firstly, I will address the proposed amendments to the Local Government Act 1993 in relation to the Townsville Thuringowa Water Supply Board.

The proposed amendments provide for the conversion of the existing Townsville Thuringowa Water Supply Board to a new local government entity similar to a joint local government. The bill also repeals the Townsville Thuringowa Water Supply Board Act 1987. The board is one of the state's significant business activities which must be considered for reform in accordance with national competition policy (NCP) competitive neutrality requirements.

The board is currently established under the Townsville Thuringowa Water Supply Board Act 1987. The board was created in 1987 to supply bulk water to the Townsville and Thuringowa City Councils and to large industrial customers that require more than 200 megalitres of water per year. The board is currently a state statutory authority, but its legal structure was modelled on the joint local government provisions in the repealed Local Government Act 1936. The board was originally formed in preference to a joint local government, largely to resolve differences between the two councils over decisions concerning administration of bulk water supply in the area. The enabling legislation provided for the board to be made up of an equal number of councillors from each council with an independent chairperson.

In 1997, an NCP public benefit assessment recommended that the board be commercialised. In negotiations over implementing this recommendation, Townsville City Council and Thuringowa City Council proposed the board become a joint local government. However, the councils also proposed that provision be made for the joint local government to continue to have an independent chairperson.

A joint local government under the Local Government Act 1993 must draw all its members from the component local governments. Because the councils wanted both a joint local government model and an independent chairperson, a proposal was developed for a new type of local government entity with the features of a joint local government, but with an independent chairperson who is not a councillor of either component council. Under the proposal, both councils appoint the independent chairperson. However, there is a reserve power for the Governor in Council to appoint the chairperson if the councils cannot agree.

The new joint local government entity is to be commercialised, that is, it will operate on a commercial basis. This move is a consequence of the NCP public benefit assessment in 1997, which found that commercialising the board was in the public interest. Once this occurs, all four of Queensland's urban water boards will either be commercialised or have an equivalent form of commercialised restructure applied to them. This will allow Queensland to meet its obligations under the NCP agreements to reform all the state's urban water boards. It will safeguard the receipt of Commonwealth competition bonus payments by the state.

The role of the board will essentially remain the same—it will supply bulk water to the Townsville and Thuringowa City Councils and to other bulk water customers in the Townsville area. This is consistent with the approach taken in the Water Act 2000, which sets up a single framework to regulate all water service providers.

Under the Water Act 2000, local governments have the option of setting up a monopoly to supply retail water in a declared area. This means that local governments can continue to exercise their role in protecting public health through supplying safe and clean water to people's homes and businesses. However, the Water Act 2000 does not permit a local government to declare a monopoly over the provision of bulk water services, for example, to industrial customers. The provisions in the bill dealing with the board's jurisdiction reflect this approach. The board will have jurisdiction to supply bulk water to the Townsville and Thuringowa City Councils and to any other bulk water consumers in its operational area.

For over two years, negotiations have been occurring to secure the agreement of the Townsville and Thuringowa City Councils to convert the board to a joint local government entity. While Townsville City Council has raised some operational issues to be addressed in implementing the changes, both councils have advised they support the legislation proceeding.

The bill provides for commencement of the provisions relating to the board to be on 30 June 2001. As part of its NCP obligations, it is desirable for the Queensland government to be in a position by June 2001 to advise the National Competition Council it has taken action to legislate on this matter and that new arrangements will be in place by 30 June 2001. Failure to meet this timetable would likely result in the loss of competition payments from the Commonwealth. Since the intention is for the bill to be passed by June 2001, it is not intended that commencement of those provisions of the bill on 30 June 2001 will have a retrospective effect.

I now turn to the proposed amendments to the Local Government Act 1993 in relation to councillors who run for higher office. The bill provides for councillors to vacate office on becoming a candidate for election to the state or Commonwealth parliaments. This proposal was included in a

discussion paper prepared by my department as part of a review of local government electoral arrangements following the March 2000 local government elections. The discussion paper was released for public comment in June 2000 and a period up to 6 October 2000 was provided for submissions in response to the discussion paper.

The LGA currently provides that a person is not qualified to hold office as a local government councillor if the person is, or becomes, a member of an Australian parliament. This means that a councillor can nominate for election as a member of the legislative assembly or the Commonwealth parliament but, if elected, the office of councillor becomes vacant from the time of election.

Mr Speaker, I seek leave to have the remainder of the second reading speech incorporated in *Hansard*.

Leave granted.

The current law was put in place following a review of the local government electoral system carried out by the Electoral and Administrative Review Commission in the early 1990s. The rationale is that a person should not be able to be both a councillor and a member of State or Commonwealth Parliament.

At present, if a member of the Legislative Assembly wishes to nominate for election to the Commonwealth Parliament, the member is required by virtue of section 44 of the Australian Constitution to resign from the office before nominating for election.

Local government electoral arrangements are largely based on the State arrangements.

The aim of this proposal is to bring greater consistency between the requirements on councillors and the requirements on members of the Legislative Assembly seeking higher office.

The issue of councillors running for higher office was first raised for public debate in 2000 and was the subject of an editorial in The Courier Mail on 31 May last year. The editorial addressed the arguments for and against councillors having to resign before running for higher office. While it acknowledged that the public is entitled to the best possible pool of candidates at elections, the editorial suggested this needs to be balanced against the view that the current arrangements encourage 'nomination without responsibility', a view put forward at the time by the member for Logan.

Local governments in Queensland have a level of autonomy that is the envy of their counterparts in other States. In Queensland they are treated as governments in their own right.

Given the level of autonomy enjoyed by councillors in their role, it is only appropriate that they should be subject to the same principle that applies to members of State Parliament who want to run for higher office.

Despite opposition from local government, there is general community support for this move, demonstrated through the consultation process on the proposal.

A total of 74 submissions were received by my Department in relation to the proposal. Of these, 13 expressed support for the proposal, while 61 were opposed. All 51 councils that made submissions oppose the proposal.

However, of the 22 submissions from respondents other than councils and the Local Government Association of Queensland, 13 were in favour of the proposal, and 9 were opposed and a number of the submissions supporting the proposal were from individual councillors.

My Department also commissioned an independent survey of community attitudes to the proposal. The survey was carried out in October 2000 by a professional research firm. 53% of respondents indicated support for the proposal, 35% were opposed and 12% were undecided.

So, while there is opposition to the proposal from councils, which is to be expected, the community in general supports the proposal.

The main reasons given by respondents in support of the proposal are that:

- there may be a conflict between a councillor's quest for higher office and their duties as councillor;
- it would stop councillors being elected with the intention of then seeking higher office prior to completing their full term of office; and
- it achieves consistency of treatment between elected representatives at the local and State levels.

I believe these arguments outweigh the objections that have been raised by local government and by the Opposition.

Mr Speaker, I now turn to proposed amendments to the Local Government Act 1993 in relation to local laws regulating how-to-vote cards

The Bill includes an amendment to the LGA to make clear that it is beyond the jurisdiction of local government to make a local law or subordinate local law which purports to regulate the distribution of how-to-vote cards at local government or State elections.

On 16 March 2000, a regulation was made under the LGA to overturn certain provisions of two local governments' local laws, which purported to prohibit the distribution of how-to-vote cards at local, State and Commonwealth elections.

This action was taken following Crown Law advice that it is beyond the jurisdiction of local government to make a local law which purports to prohibit the distribution of how-to-vote cards and that, to the extent that any local laws did purport to prohibit or restrict the distribution of how-to-vote cards, the local laws were invalid.

However, on receiving advice of the proposed regulation, one of the councils, the Caloundra City Council, attempted to circumvent the effect of the regulation by making a subordinate local law under its existing Local Law dealing with Licensing.

The State could not prevent this subordinate local law being made, because the process for making a subordinate local law under the LGA does not require consultation with the Minister for Local Government.

Under Caloundra City Council's Local Law dealing with Licensing, a person must obtain a licence to carry out certain 'prescribed activities'. Under the subordinate local law, the distribution of how-to-vote cards was listed as a prescribed activity.

As such, candidates at the March 2000 local government election and the February 2001 State election were required by the council to obtain permits in order to distribute how-to-vote cards in the vicinity of 100 meters of a polling booth in this council's area.

While Crown Law has advised that local laws purporting to prohibit how-to-vote cards are invalid, in light of this council's actions, an amendment to the LGA is necessary to remove any doubt that it is beyond the jurisdiction of a local government to make a local law or subordinate local law which purports to prohibit or restrict the distribution of how-to-vote cards at local government or State elections.

Mr Speaker, I now turn to the proposed amendments to the Local Government Act 1993 in relation to the Kuranda Tourist Infrastructure Levy

On 23 March 1994, the Kuranda Tourist Infrastructure Levy Agreement (the Agreement) was signed between the Queensland Government and the Mareeba Shire Council to provide for contributions towards tourist infrastructure in the town of Kuranda. The Agreement had an initial life of 10 years but was extended in May 1997 for a further 10 years. The Agreement is due to expire on 1 April 2014.

The Agreement is based on the Queensland Government contributing to the Council $1 per rail passenger between Cairns and Kuranda. To date Queensland Rail (QR) has voluntarily collected the payment from passengers by incorporating the levy in the price of a ticket. Passengers on Skyrail, visitors arriving by car or bus, and local traders also contribute to infrastructure provision in Kuranda by means of other arrangements.

In the case of Skyrail, contributions are in accordance with a formula set down in the Agreement (since May 1997). The council can require car and bus visitors to Kuranda to contribute through a system of regulated parking. Commercial business operators contribute through a special rate over and above their general rate.

Funds raised under the Agreement from Kuranda Rail and Skyrail are remitted on a quarterly basis to Mareeba Shire Council. Since the Agreement was signed in 1994, a total of $3,276,487 in levy collections has been paid by the Government to Mareeba Shire Council.

The Agreement requires Mareeba Shire Council to spend the funds on providing tourist infrastructure identified in an approved works program, developed after extensive community consultation as part of the Kuranda Strategic Management Plan.

This Agreement is a unique arrangement that was developed to address the specific problems facing Kuranda as a centre that attracts tourists as day visitors. There is limited capacity for the council to generate sufficient revenues from day visitors to fund the provision of the infrastructure needed to cope with the large volume of tourists.

A third party operator is seeking access under the Queensland Competition Authority Act 1997 to the Kuranda rail line and is expected to commence operating in the near future.

Because QR has been the only rail operator to date, and as it has been collecting and remitting funds on a voluntary basis, legislation has not been necessary to enforce the levy requirements. However, with the advent of third party access and the prospect of a third party operator soon commencing operation on the Kuranda rail line, the legality of enforcement of the levy is now an issue.

Once competition commences on the Kuranda rail line, it will be important that there be a level playing field for all operators in terms of paying the levy.

The only way this can be achieved is through legislation to require all rail operators on the Kuranda line to pay the levy.

The legislation will enable the Queensland Government to fulfil its commitment under the Agreement to provide to the Mareeba Shire Council the equivalent of $1 per passenger on the Kuranda rail line.

While the legislation provides a head of power to require rail operators to pay the levy, it does not deal with the detailed procedures for passing on the funds to the Mareeba Shire Council. These are administrative matters that are currently dealt with in the Agreement. The Bill provides that the payments to the Mareeba Shire Council are to be made on the conditions decided by the Minister. The intent is that the funds will be passed on to the Mareeba Shire Council in accordance with the terms of the Agreement.

The requirement in the Bill for the payment of the levy expires on 1 April 2014. This is intended to reflect the fact that the current Agreement between the Queensland Government and the Mareeba Shire Council expires on 1 April 2014. However other provisions in the Bill dealing with the Kuranda rail levy expire on 30 June 2015, which ensures rail operators must report on payments to the State Government for amounts collected by the levy in its last financial year.

Mr Speaker, I now turn to the proposed amendments to the Local Government Act 1993 in relation to councillors and council employees as directors of local government owned corporations

In order to meet the State's NCP obligations, amendments to the Local Government Act 1993 (LGA) were enacted in 1997 to enable local governments to corporatise their significant business activities.

This framework was modelled on the equivalent provisions for State-owned entities under the Government Owned Corporations Act 1993. However, the LGA also contains a transitional provision that for a limited time after passage, councillors and council employees could comprise up to one-half of the directors of the board of a Local Government Owned Corporation (LGOC).

This provision was to accommodate local government concerns about having an initial presence on the Board of Directors of an LGOC.

A period of 2 years was allowed from the passage of the amendments for councillors and employees to be LGOC directors. This 2 year limit does not apply to an LGOC that is a holding company with no operational activities. In this case it is the subsidiaries of the holding company to which the 2 year limit applies.

In addition, the amendments to the LGA required the Minister to complete a review by 1 July 2001 of the appropriateness of councillors and council employees being directors of LGOCs.

During the transitional period, Queensland local governments have not moved to corporatise their business activities, largely because of the Commonwealth income taxation arrangements in respect of corporatised local government business activities that impacted on the financial viability of potential LGOCs. However, the Commonwealth has advised it intends to make the necessary legislative changes to provide new taxation arrangements in respect of LGOCs. This means a number of councils could decide to establish LGOCs over the next two years.

As no LGOCs are in existence at the moment, it would be preferable not to review the provisions at this stage. If the Commonwealth takes action to clear the way for councils to establish LGOCs over the next two years, this should provide a basis for reviewing whether the transitional arrangements should be continued.

Consequently, the Bill provides an extension until 1 July 2003 of the provisions permitting councillors and council employees to be directors of LGOCs. As a consequence, the Bill also extends until 1 July 2003 the deadline for completing a review of these transitional arrangements.

Mr Speaker, I will now address the proposed amendments to the Integrated Planning Act 1997 (IPA) in relation to:

- development control plans made under the repealed Local Government (Planning and Environment) Act 1990 (P&E) Act;
- amendments to the IPA in relation to interim development controls;
- an amendment to the IPA to correct a drafting ambiguity in relation to Ministerial call-in powers; and
- an amendment to the Land Title Act 1994.

I have taken the opportunity to include in this Bill three amendments to the IPA and a related amendment to the Land Title Act 1994 to clarify aspects of the intention and operation of the IPA and to provide interim planning controls for two local governments pending the implementation of proposed IPA schemes.

The IPA preserves the operation of certain development control plans (DCPs) made under the previous planning legislation. Last year, issues were raised in a matter before the Planning and Environment Court in relation to the Kawana Waters DCP challenging the validity of precinct plans made under the DCPs and development approved under those plans, on the basis that these actions are inconsistent with the IPA.

The intention of the Act has always been that these DCPs should continue to operate in the same way as they did under the previous legislation. The particular matter was settled. However, if the issue were to be raised again, a decision contrary to the intention of the IPA could have a general impact on the validity and operation of DCPs for master planned community developments throughout Queensland. The proposed amendment, to take effect retrospectively, will clarify the existing provisions of the IPA and remove any doubt about the validity of plans made and development approved under the DCPs to which the provision applies.

In addition, the Shires of Wambo and Belyando have indicated their intention to prepare planning schemes under the IPA for their respective areas. At present these Shires have planning schemes in place only with respect to the urban parts of their shires. The local governments are concerned there are significant local development issues that need to be addressed and that are not addressed by the general state-wide controls applying under the IPA such as those relating to building safety and pollution control. In particular, the local governments have concerns about the potential effects on flooding of the location of significant land use activities like feedlots, piggeries and poultry farms. The local governments also are concerned about the local environmental and amenity effects of kennels and aquaculture activities.

The former Local Government (Planning and Environment) Act 1990 provided for local governments who had resolved to prepare a planning scheme to have all or part of generic interim development control (IDC) provisions apply to their area pending the introduction of a proposed planning scheme. To provide Wambo and Belyando with a similar level of interim development control, the IPA has been amended to provide for the IDC provisions under the P&E Act to apply to an appropriate extent to their areas until their IPA planning schemes are in place. However, as was provided under the former Act, the IDC controls have been tailored to address specific issues identified by the two Shires.

A small amendment is also being made to IPA to correct a drafting ambiguity in relation to Ministerial call-in powers. The effect of the current wording is to imply that the call-in powers may only be exercised for development applications where an appeal has been lodged in the Planning and Environment Court. This is unintended as it makes significant parts of the subsequent sections meaningless. The amendment clarifies the original intent of the section.

The amendment to the Land Title Act 1994 corrects an oversight that occurred in the transition to the IPA. The creation of an easement giving access to a road is assessable development requiring the approval of the local government. However, the oversight allows an access easement to be created without any need for evidence of the local government's approval of the easement to be submitted to the Titles Office. This has allowed some access easements to be registered without prior local government approval, potentially creating local traffic safety hazards where the accesses meet the road. The amendment inserts a provision in the Land Title Act 1994 making local government approval of the instrument of agreement for the easement a prerequisite to registration.

The Local Government Association of Queensland has been consulted on provisions in the Bill.

The Local Government Association through its annual conference has adopted policies that are in opposition to the electoral amendments in relation to councillors vacating office on nominating for Parliament and local laws purporting to prohibit or regulate how-to-vote cards that were outlined above. I accept that the Association will naturally want to advocate on behalf of the interests of its members, but on these matters the Government has had regard to the wider public interest.

The Association has advised that it supports the other provisions in the Bill.

I commend the Bill to the House.