Speech by

Hon. NITA CUNNINGHAM

MEMBER FOR BUNDABERG

Hansard 27 November 2001

LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL (No. 2)

Hon. J. I. CUNNINGHAM (Bundaberg—ALP) (Minister for Local Government and Planning) (2.37 p.m.): I move—

That the bill be now read a second time.

The purpose of the Local Government and Other Legislation Amendment Bill (No. 2) 2001 is to amend the Local Government Act 1993—LGA—to achieve a number of objectives in the areas of control over specific dog breeds, increased membership of the Local Government Grants Commission, the powers of joint local governments, and the application of the state government powers of financial oversight in the Statutory Bodies Financial Arrangements Act 1982—SBFA Act—to local government owned corporations—LGOCs. The Bill also amends the Queensland Treasury Corporation Act 1988 to make clear that in applying the SBFA Act to LGOCs, the performance dividend requirements do not apply.

Firstly, the bill establishes a state regulatory framework for dog breeds that are subject to the Commonwealth's importation ban and crossbreeds of these dogs. Secondly, the bill will expand the membership of the Local Government Grants Commission from five to six, and will require this additional member to have particular knowledge of Aboriginal and Islander councils. Thirdly, the bill will clarify that a joint local government may, with the consent of its component local governments, disperse funds that are not required for the exercise of its exclusive jurisdiction for any other local government purpose. A parallel amendment is proposed to clarify that the Townsville-Thuringowa Water Supply Board may also disperse such funds in this way. Fourthly, the bill will enable the state to supervise the financial arrangements of LGOCs under the SBFA Act. I will outline the components of the bill in the order in which they are presented.

Firstly, I will address the proposed amendments to establish a state regulatory framework for dog breeds that are subject to the Commonwealth's importation ban. The proposed amendments provide for the creation of a state framework of minimum standards for the regulation of breeds of dog the importation of which is prohibited by the Commonwealth, namely, dogo Argentino, fila Brasileiro, Japanese tosa, American pit bull terrier or pit bull terrier, and crossbreeds of these dogs—referred to as restricted dogs.

The Commonwealth Customs (Prohibited Imports) Regulation gives effect to the federal government's decision of 25 November 1991 to exclude from entry into Australia dogs which pose a threat to public health and safety.

The key elements of the Bill are—

(a) placing controls and conditions upon the keeping of restricted dogs;

(b) prohibiting the breeding, sale or exchange and requiring the de-sexing of restricted dogs;

(c) enabling the destruction of a restricted dog in specified circumstances; and

(d) providing for local governments to be responsible for the administration and implementation of this regime.

These key elements are based on an assessment of the approaches of the other Australian states to legislation for the regulation of breeds of dog prohibited from importation by the Commonwealth. State frameworks to address this issue have been developed in New South Wales (Companion Animals Act

1998 (NSW)) and South Australia (Dog and Cat Management Act 1995 (SA)). Further, Victoria has recently introduced a bill, and Western Australia has announced its intention to prepare legislation to introduce a substantially similar regulatory framework for the regulation of restricted dogs.

In developing proposals for legislation, a number of issues have been considered to ensure that the regime is workable for councils and will achieve the objectives previously outlined. The bill deems those breeds of dog prohibited from importation by the Commonwealth to be restricted dogs. An owner of a restricted dog is responsible for applying to the council for the area where the dog is kept to obtain a permit for keeping the dog. If an owner does not voluntarily undertake the application for a permit, the council may commence the process to declare a dog to be a restricted dog. If this occurs, the owner must then obtain a permit for the dog. A person under 18 years of age cannot be a registered owner of a restricted dog.

When an owner of a restricted dog obtains a permit, they must comply with the permit conditions. These conditions relate to the keeping of the dog in accordance with the expectations of public health and safety and include ensuring—

- the dog wears the required identification tag at all times;
- the dog wears a muzzle and is under effective control in a public place;
- the dog is kept in an enclosure which complies with the requirements under the bill and proposed regulation;
- a sign is attached to the entrance of a place containing the enclosure giving public notice of the restricted dog; and
- that the permit holder notifies the council of any change in their residential address.

A restricted dog permit must be renewed annually and is not transferable between local government areas. This means if an owner and restricted dog wish to relocate to a different local government area, the owner will need to apply to the relevant council to obtain a permit for keeping a restricted dog at an address in the area. A restricted dog can only be kept at a place where there is a detached dwelling on the land, and a responsible person usually resides in the dwelling. In the interests of animal welfare and public health and safety, it is not considered appropriate for these dogs to be kept in multi-residential dwelling situations such as apartment and townhouse complexes or caravan parks.

The bill provides that it is an offence not to have a permit for a restricted dog. It will also be an offence to breach any of the permit conditions, with the maximum penalty for any such breach being 75 penalty units, that is, $5,625. Other offence provisions include a maximum penalty of 300 penalty units, or $22,500, if a person allows or encourages a restricted dog to attack or cause fear to a person or animal.

It is intended that the legislation will commence upon a date fixed by proclamation. However, the bill includes transitional provisions which in effect delay the implementation of the new permit system. Councils will have four months from the date of proclamation of the legislation to review their local laws and repeal any redundant provisions using a truncated local law-making process. At the expiry of this period, each council must notify their community of the regulatory framework in place in their area for the keeping of restricted dogs. As the intention is that the state legislation will provide a minimum standard, more stringent standards for the keeping of restricted dogs may apply in different local government areas. Owners of restricted dogs will have six weeks from the date of the expiry of the review period to comply with the regulatory requirements for the keeping of restricted dogs in their local government area.

I will now discuss how the new state legislation will interact with existing and future local government local laws dealing with the regulation of dogs. This is a complex issue given that many councils have been willing to exercise jurisdiction in the regulation of dogs on the basis of behaviour and/or breed. In developing the bill, my department has consulted extensively with a number of key internal and external stakeholders to negotiate a workable framework for local governments.

Currently, the main control on dangerous dogs in Queensland is through local government local laws. A model local law, Model Local Law No. 4 (Keeping and Control of Animals) 2000, has been approved to facilitate local government regulation of dangerous dogs. Model Local Law No. 4 includes a framework for the regulation of dogs declared dangerous on the basis of behaviour or breed. Under the Model Local Law, a local government can declare dogs that attack, threaten attack or exhibit other behaviours that threaten public safety to be dangerous dogs and apply conditions on the keeping of such dogs. A local government may also, by subordinate local law, prohibit the keeping of a specified breed of dog. All local governments, except one, have adopted a local law which is either the Model Local Law or is substantially the same. A number of local governments have a subordinate local law which prohibits the keeping of the breeds of dog prohibited from importation by the Commonwealth in their area.

As councils have been willing to exercise jurisdiction on this matter, the state legislation provides minimum standards for the regulation of restricted dogs. This means local governments can prescribe higher standards or impose higher responsibilities on the owner of a restricted dog through existing or new local laws. Where a council has a local law which prohibits restricted dogs, the local law will apply in that local government area instead of Chapter 17A of the bill.

The bill specifically provides the matters on which councils may make a local law to prescribe a higher standard, obligation or responsibility for the owner. These matters include requirements for an application, permit conditions and public notice of the dog's presence at the place where the restricted dog is kept. However, a local government must comply with those parts in the bill dealing with the declaration process, the seizure and destruction of restricted dogs and the procedures and evidentiary rules for appeals to the Magistrates Court. It is important that a consistent standard is applied across the state on these procedural matters. The bill also provides that a council's local laws on matters relevant to owners of all types of dogs will apply to the owners of restricted dogs, for example, the maximum number of dogs to be kept at a place in the area.

In developing the bill consideration has been given to the difficult issue of breed identification. As there is no scientific means of proving that a dog is of a restricted breed, or a crossbreed, identification is based on the physical characteristics of the dog. The bill provides two methods for declaring a dog to be a restricted dog, and a council may decide the appropriate method on a case-by-case basis. The first method involves a council obtaining an expert opinion on a dog's breed from a veterinary surgeon and subsequently notifying an owner of this opinion and the intention to declare a dog to be a restricted dog. An owner could then make written representations to the council, for example, arguing, on the basis of a veterinarian or breed certificate, that their dog is not a restricted dog. In these circumstances, a council must consider all the evidence before it when making its decision on a dog's declaration status. There is no appeal on the merits of a decision if this method of declaration is used. However, an owner retains the right to judicial review of the council's decision.

The second method provides for an authorised officer of a council to declare a dog to be a restricted dog. Where a council uses this declaration method, an owner has a right of appeal to the Magistrates Court, where they may present evidence that the dog is not one of the restricted breeds.

The bill requires each local government that permits the keeping of restricted dogs in their area to create and maintain a register of restricted dogs. The register has to be open for public inspection, and include the following details—

- the address where the dog is kept; and
- a detailed physical description of the restricted dog.

In order to maintain the privacy of certain members of the community, the bill provides that persons who are protected from the disclosure of their name and address under the Valuation of Land Act 1944 for the purposes of local government records, such as the voters roll or land roll, are similarly protected under the restricted dog register provisions. A protected person is a person whose personal safety or property would be placed at risk if their name and postal address were included on such public records.

In enforcing this legislation the bill provides that a council may rely on powers of entry in Chapter 15, Parts 4 and 5, of the LGA, or on powers of entry contained in a local law on dangerous dogs under section 1105 of the LGA. The intent is to enable councils to utilise powers of entry under local laws to enforce the legislation on restricted dogs, thus allowing consistency in the administration and enforcement of dangerous and restricted dog matters. My department will provide training to councils in relation to carrying out local law reviews and the identification of these breeds of dog.

It is proposed that technical advisers will be engaged to develop materials and facilitate training sessions across the state in relation to breed identification issues. The Department of Aboriginal and Torres Strait Island Policy will coordinate similar training sessions for Aboriginal and island councils. As you would expect with a sensitive subject such as this, there are mixed views on the proposals in the bill. Of the 253 submissions received from the public when the draft legislative proposals were released for comment in mid-September 2001, 218 were opposed (including 179 form letters) and 34 were in support, and one could not be classified. The Australian Veterinary Association also did not support the bill.

The main reasons for the opposition revolved around the effectiveness of breed-specific legislation in reducing dog attacks, the difficulty of breed identification and the need for education regarding responsible pet ownership. In response, I would simply say there are certain fighting dogs you cannot now bring into Australia and to reduce the risk to public health and safety the bill provides that if you have one of these dogs or a crossbreed in Queensland, extra controls will now apply. These controls are based on the approaches taken in other states. The Department of Primary Industries also provides funding for community education on pet ownership. Other submissions received by my department were largely supportive of the proposals in the bill.

Although its general policy on animal management does not support breed-specific regulation, due to recent events the Royal Society for the Prevention of Cruelty to Animals (Queensland) does support the proposed state regulatory framework for restricted dogs, which parallels the Commonwealth legislation. The Canine Control Council—CCC—also supports the proposed regulatory framework for restricted dogs. Although the CCC acknowledged that identification of dogs by breed can be very difficult in some circumstances, it is prepared to continue to assist councils in breed identification.

The Local Government Association of Queensland advised it supports the proposed regulatory framework and noted that, at its annual conferences, resolutions have been passed calling on the state government to enact legislation for the control of pit bull terriers and pit bull terrier type dogs. The response from local governments has also been generally supportive of the proposed regulatory framework. However, some councils were concerned with enforcement of the regulatory framework.

Next, I shall turn to the proposed amendments in relation to membership of the Local Government Grants Commission. The commission is responsible for making recommendations for the distribution of the financial assistance grants to Queensland's 125 local governments as well as the 32 Aboriginal and Torres Strait island councils. Its current membership draws on people with a wide range of experience in local government matters. However, it has no member with particular experience and knowledge of the circumstances and operating environments of Aboriginal and Torres Strait island local governments. This proposed amendment will expand the membership of the commission from five to six members, with the additional member to have particular knowledge of Aboriginal and island councils. All stakeholders consulted support this amendment.

I will now turn to the proposed amendments concerning joint local governments. This is a clarifying amendment intended to ensure that the original policy intention of the Local Government Act 1993 is achieved. Under the LGA, joint local governments are given exclusive jurisdiction in their geographic area for the functions for which they were created. These functions can be as varied as supplying bulk water, running saleyards or libraries where it is convenient for the function to be conducted over the area of more than one local government. Once a joint local government is created, the component local governments cannot exercise jurisdiction over the matters given to the joint local government.

The LGA also provides for a joint local government to undertake other local government functions if its component local governments agree. It was always intended that a joint local government could expend surplus funds on any purpose within the broad jurisdiction given to local governments. However, this power was subject to the component local governments agreeing on the purpose for which the funds would be spent. The need for a clarifying amendment arose when advice was sought in respect of a proposal from the Caloundra-Maroochy Water Supply Board. The board's jurisdiction is to provide bulk water to the Caloundra City and Maroochy Shire Councils and to establish recreational facilities at the board's bulk water storage facilities.

The board has also been engaged in electricity generation as an additional function in reliance on existing provisions in the act. However, the board wishes to expand its current electricity generation operations from hydroelectricity to wind farming, and to expend funds not required for water supply purposes on these new activities. The proposed amendment will clarify that a joint local government may disburse funds that are not required for its exclusive jurisdiction for another local government purpose, provided all the component local governments agree. This additional function does not become part of the joint local government's exclusive jurisdiction. Therefore, both a joint local government and its component local governments will be able to concurrently undertake such functions. Similar amendments are proposed to the provisions dealing with the Townsville-Thuringowa Water Supply Board.

Earlier this year, the Local Government and Other Legislation Amendment Act 2001 converted the Townsville-Thuringowa Water Supply Board to a new local government entity similar, but not identical, to a joint local government. The purpose of the board is to supply bulk water to the Townsville and Thuringowa City Councils and to other bulk water consumers in its operational area. It was also given the ability to expend surplus funds on local government functions with the approval of its component local governments. Therefore, a parallel amendment is now proposed to the LGA to clarify that the board may in fact disburse funds in this manner.

Lastly, I will turn to the proposed amendments in relation to Local Government Owned Corporations (LGOCs). Under the LGA, local governments may establish LGOCs to conduct business activities in a similar way to state government business activities set up as government owned corporations (GOCs). No LGOCs presently operate in Queensland, but Hervey Bay City Council has advised that it intends to establish one for its water and sewerage business activities by January 2002. It is expected that a number of LGOCs may be established by other councils in the near future.

The addition of this amendment to the bill is primarily to ensure that LGOCs obtain state approval for financial arrangements in the same way that any local government that wishes to borrow

must obtain approval. Applying the SBFA Act to LGOCs requires a related technical amendment to the Queensland Treasury Corporation Act 1988—to clarify the state performance dividend requirements do not apply to LGOCs. I commend the bill to the House.