




Speech By
Hon. Stirling Hinchliffe

MEMBER FOR SANDGATE

Record of Proceedings, 20 March 2018

LOCAL GOVERNMENT LEGISLATION (VALIDATION OF RATES AND CHARGES) AMENDMENT BILL

Second Reading

 **Hon. SJ HINCHLIFFE** (Sandgate—ALP) (Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs) (11.33 am): I move—

That the bill be now read a second time.

Queensland local governments and ratepayers expect and deserve to have clarity and certainty when it comes to delivery of essential services. Local governments must be financially sustainable in order to function effectively. The bill before the House addresses the potential financial exposure of Queensland councils. This follows a decision of the Supreme Court of Queensland in the case of *Linville Holdings Pty Ltd v Fraser Coast Regional Council*.

On 6 November 2017, the Supreme Court declared that, for each of the financial years ending 30 June 2015, 2016 and 2017, Fraser Coast Regional Council failed to validly make and levy rates and charges within its local government area. This was because Fraser Coast Regional Council did not decide, by resolution at its budget meeting for that year, what rates and charges were to be levied.

In levying rates and charges, the Local Government Act 2009 section 94(2) and the City of Brisbane Act 2010 section 96(2) require that a local government must decide, by resolution at the local government's budget meeting for a financial year, what rates and charges are to be levied for that financial year. The Local Government Act 2009 section 107A and the City of Brisbane Act 2010 section 104 require a resolution to adopt the budget.

Fraser Coast Regional Council, for the relevant financial years, resolved to adopt the budget for the financial year as presented in a number of attachments. The attachments included a schedule of rates and charges and a revenue statement which stated the rating categories and a description of each rating category. The Supreme Court found that 'a resolution to adopt a budget does not ... without more, satisfy the requirement for a resolution to decide what rates and charges are to be levied'.

Although the court's declaration applies to the Fraser Coast Regional Council, other local governments may have constructed their resolutions with similar deficiencies to those outlined in the court's decision. These local governments may therefore be similarly affected, if similar declarations are made in relation to those local governments' rates and charges.

The bill amends the Local Government Act 2009 and the City of Brisbane Act 2010. The amendments apply to a rate or charge levied or to be levied by a local government under the Local Government Act 2009, the repealed Local Government Act 1993, the repealed Local Government Act 1936, the City of Brisbane Act 2010 or the repealed City of Brisbane Act 1924.

As I stated when I introduced the bill, retrospective legislation is rarely put before this House. I draw to the attention of the House that these amendments apply in specific circumstances. They apply with respect to a financial year up to and including the financial year ending 30 June 2018. Further, they apply to a rate or charge that was not decided to be levied by resolution of the local government at its budget meeting for the financial year under the current or repealed local government legislation.

The bill declares that the rate or charge is taken to be, and to always have been, as validly levied by the local government as it would have been if the local government had decided to levy the rate or charge by resolution at its budget meeting for the financial year under the current or repealed local government legislation. The bill also declares that anything done or to be done in relation to the rate or charge is as valid as it would have been or would be if the local government had decided to levy the rate or charge by resolution at its budget meeting for the financial year under the current or repealed local government legislation.

The bill provides the following examples of 'things done or to be done in relation to the rate or charge': the bringing by the local government of proceedings against a person; the sale of land or the taking of steps preparatory to the sale of land by the local government; the acquisition of land or the taking of steps preparatory to the acquisition of land by the local government; and the charging of interest on the rate or charge.

As I have just outlined to the House, the bill applies to rates and charges levied in certain circumstances. Under the Local Government Act 2009 section 92(1) and the City of Brisbane Act 2010 section 94(1) there are four types of rates and charges. These are: general rates, including differential rates; special rates and charges; utility charges; and separate rates and charges. The bill captures each of the four types of rates and charges as appropriate.

When I introduced this bill in February I advised the House that there was a clear and compelling case for retrospective legislation. The bill was declared urgent under the provisions of standing order 137(1)(a) of the standing rules and orders of the Legislative Assembly. The bill was referred to the Economics and Governance Committee. I will now address the committee's report on the bill which was tabled on 15 March 2018. I thank the committee and the secretariat for its thorough consideration of the bill. My thanks also go to the Local Government Association of Queensland which made a submission as part of the committee's examination of the bill. I thank the LGAQ for its support for the policy objectives of the bill. After careful consideration of the committee's report, I am pleased to table the government's response.

Tabled paper: Economics and Governance Committee, Report No. 3, 56th Parliament—Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018, government response [\[388\]](#).

In addition to the committee's first recommendation that the bill be passed, the committee made one further recommendation. The committee recommended that the Department of Local Government, Racing and Multicultural Affairs monitors how local governments are levying their rates and charges over the next two financial years—2018-19 and 2019-20—to ensure local governments are aware of the proper processes and are complying with the statutory requirements. The government supports this recommendation.

When the bill was introduced, I informed the House that to assist local governments with making future resolutions in line with legislative requirements the government and the Department of Local Government, Racing and Multicultural Affairs will continue to work in partnership with the LGAQ, and with councils, to provide advice through websites, bulletins and letters. May I reassure the House that this work is well underway, and I welcome the LGAQ's advice to the committee that it is preparing template best practice rating and budget resolutions to be made available to all councils. I note that the LGAQ informed the committee of its intention to hold a ratings masterclass at a date to be determined in April or May. I am advised that this has now been scheduled for 5 April 2018.

The amendments in the bill will operate retrospectively. The committee considered the fundamental legislative principle stated in section 4(2)(a) of the Legislative Standards Act 1992 that legislation is to have sufficient regard to the rights and liberties of individuals. The committee noted that legislation should not adversely affect rights and liberties or impose obligations retrospectively and that strong argument is required to justify an adverse effect on rights and liberties or an imposition of obligations retrospectively.

The committee acknowledged the department's advice that the retrospective operation of the amendments is necessary to provide financial surety to local governments and ratepayers. The committee commented that, given the circumstances in which the need for the bill has arisen, and the consequent validating nature of the provisions, it considers the bill's retrospective effect is justified and the impact on the rights and liberties of individuals is appropriate in the circumstances.

Communities across Queensland deserve to have confidence in the financial sustainability of their councils. This bill addresses the potential financial exposure of councils with respect to rates and charges levied over the years up to and including the current financial year. This bill provides greater certainty to councils about their financial position as they commence their budget preparations for the 2018-19 financial year. I commend the bill to the House.