



Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018

Report No. 3, 56th Parliament
Economics and Governance Committee
March 2018

Economics and Governance Committee

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Acknowledgements

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Abbreviations

Bill	Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018
COB Act	<i>City of Brisbane Act 2010</i>
COB Regulation	City of Brisbane Regulation 2012
committee	Economics and Governance Committee
department	Department of Local Government, Racing and Multicultural Affairs
LG Act	<i>Local Government Act 2009</i>
LG Regulation	Local Government Regulation 2012
LS Act	<i>Legislative Standards Act 1992</i>

Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

On behalf of the committee, I thank those organisations who made written submissions. I also thank our Parliamentary Service staff and the Department of Local Government, Racing and Multicultural Affairs for their assistance.

I commend this report to the House.



Linus Power MP
Chair

Recommendations

Recommendation 1

2

The committee recommends the Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018 be passed.

Recommendation 2

6

The committee recommends that the Department of Local Government, Racing and Multicultural Affairs monitor 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.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (the committee) is a portfolio committee of the Legislative Assembly.¹ The committee's areas of portfolio responsibility are:

- Premier and Cabinet, and Trade
- Treasury, and Aboriginal and Torres Strait Islander Partnerships
- Local Government, Racing and Multicultural Affairs.²

The committee is responsible for examining each Bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles.³

1.2 Inquiry process

The Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 15 February 2018. The committee was required to report to the Legislative Assembly by 15 March 2018.

During its examination of the Bill, the committee:

- invited written submissions from the public, identified stakeholders and subscribers; the one submission received and accepted by the committee is at **Appendix A**
- received a public briefing from the Department of Local Government, Racing and Multicultural Affairs (the department) on 5 March 2018; a list of witnesses who appeared at the briefing is at **Appendix B**
- requested and received written advice from the department on the Bill and issues raised in the submission.

Copies of the material published in relation to the committee's inquiry, including submissions, correspondence from the department and transcripts are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- amend the *Local Government Act 2009* (LG Act), *City of Brisbane Act 2010* (COB Act) and relevant repealed legislation⁴ to validate rates and charges made and levied or to be levied by a local government without an express resolution at its budget meeting for a financial year up to and including the year ending 30 June 2018
- declare that anything done, or to be done, in relation to the rate or charge levied under the LG Act, COB Act or relevant repealed legislation is valid as if the local government had decided to levy the rate or charge by the appropriate resolution.⁵

1.4 Government consultation on the Bill

The explanatory notes state that the Local Government Association of Queensland (LGAQ) and Brisbane City Council were consulted, and support the Bill's policy objectives.⁶

¹ The committee was established on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) section 88 and the Standing Rules and Orders of the Legislative Assembly (Standing Orders) SO 194.

² POQA, s 88; Standing Orders, SO 194 and sch 6.

³ POQA, s 93(1).

⁴ *City of Brisbane Act 1924*, *Local Government Act 1993* and *Local Government Act 1936*.

⁵ Explanatory notes, p 1.

⁶ Explanatory notes, p 3.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by the department and submitters, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018 be passed.

2 Background to the Bill

2.1 Overview of legislative framework for levying rates and charges

The LG Act and COB Act make provisions for local government⁷ to levy rates and charges.

Rates and charges are levies imposed by a local government on land or for a service, facility or activity supplied by, or on behalf of, the local government.⁸ Both the LG Act and COB Act provide for four types of rates and charges:

- *general rates* for services, facilities and activities supplied for the benefit of the community in general such as, the cost of roads and library services
- *special rates and charges* for services, facilities and activities associated with particular land, such as the cost of maintaining a road in an industrial area that is regularly used by heavy vehicles
- *utility charges* for services, facilities or activities for waste management and gas, sewerage or water, or another utility prescribed under the City of Brisbane Regulation 2012 (COB Regulation)
- *separate rates and charges* for any other service, facility or activity.⁹

Under the LG Act and COB Act, local governments must levy general rates on all rateable land,¹⁰ and may levy special rates and charges, utility charges, and separate rates and charges. The Acts also provide that a local government may categorise rateable land, and decide differential rates according to whether the land is the principal place of residence of the owner.¹¹

The local government must decide the rates and charges to be levied for a financial year by resolution at its budget meeting for the financial year.¹² Under the Local Government Regulation 2012 (LG Regulation) and COB Regulation, the resolution must state the rating categories of rateable land in the local government area and a description of each of the rating categories¹³, and identify the rateable land to which the special rates or charges apply.¹⁴

The LG Act provides that the local government must adopt a budget, by resolution, before 1 August in the financial year to which it relates, and the COB Act similarly provides that a budget must be adopted, by resolution of the local government, before the start of the financial year to which the budget relates.¹⁵ The budget must include a statement of income and expenditure, stating among other things, the rates and utility charges,¹⁶ and a revenue statement providing an outline of the rates and charges to be levied in the financial year, any concessions to be granted, and whether a resolution has been made limiting an increase of rates and charges. The revenue statement must also state:

- the rating categories and a description of each category if the local government is levying differential general rates
- a summary of the terms of any joint government activity for which the local government levies special rates or charges.¹⁷

⁷ In this report a reference to local government includes a reference to the Brisbane City Council.

⁸ LG Act, s 91; COB Act, s 93.

⁹ LG Act, s 92; COB Act, s 94.

¹⁰ Rateable land is any land or building unit in the local government area that is not exempt from rates (exempt land includes land that is occupied by the State or a government entity, land in a state forest, rail corridor land).

¹¹ LG Act, s 94; COB Act, s 96.

¹² LG Act, s 94(2); COB Act, s 96(2).

¹³ LG Regulation, s 81(3); COB Regulation.

¹⁴ LG Regulation, s 81(3); COB Regulation, s 74(3).

¹⁵ LG Act, s 107A; COB Act, s 104.

¹⁶ Section 169 of the LG Regulation and section 160 of the COB Regulation prescribe the requirements for the preparation and content of a local government's budget for each financial year.

¹⁷ LG Regulation ss 169, 172; COB Regulation ss 160, 164.

2.2 Judicial consideration

Linville Holding Pty Ltd recently challenged the rates and charges levied by the Fraser Coast Regional Council (FCRC),¹⁸ contending that the FCRC ‘failed to comply with the statutory requirements to make or levy valid rates and charges’¹⁹ and sought court declarations that the ‘general differential rates, special rates and charges for the 2014/15, 2015/16 and 2016/17 financial years were made invalidly’.²⁰

For the financial years ending 30 June 2015, 30 June 2016 and 30 June 2017, the FCRC resolved to adopt the budget for the financial year as presented in a number of attachments. As required under the LG Regulation, the attachments included a statement of income and expenditure and a revenue statement with information about the proposed rates and charges. However, the FCRC did not make a separate resolution regarding the rates and charges to be levied for those financial years as required by section 94(2) of the LG Act.

On 6 November 2017, the Supreme Court found that the FCRC ‘failed to validly make and levy rates and charges ... because it did not decide by resolution at its budget meeting for that year, what rates and charges were to be levied as required by section 94(2) of the LGA [LG Act] 2009’.²¹

While the LG Act provides that a local government budget must include a statement of income and expenditure and a revenue statement with information about the proposed rates and charges, the Supreme Court found that adopting a budget did not ‘satisfy the requirement for a resolution to decide what rates and charges are to be levied’ and the rates and charges to be levied must be decided by a separate resolution.²²

While the Supreme Court ruling applied only to the FCRC, the Bill provisions cover all Queensland local governments to ensure the validity of rates and charges made by all local governments that may have made resolutions that do not meet the statutory requirements.²³ During the public briefing on the Bill, the department advised that a desktop audit had identified at least 25 local governments that levied the rates and charges in a similar manner to the FCRC.²⁴

¹⁸ Department, public briefing transcript, Brisbane, 5 March 2018, p 2; Explanatory notes, p 1.

¹⁹ *Linville Holdings P/L v Fraser Coast Regional Council* [2017] QSC 252, para 4.

²⁰ *Linville Holdings P/L v Fraser Coast Regional Council* [2017] QSC 252, para 1.

²¹ Explanatory notes, p 1.

²² Explanatory notes, p 2.

²³ Explanatory notes, p 2.

²⁴ Department, public briefing transcript, Brisbane, 5 March 2018, p 2.

3 Examination of the Bill

3.1 Validation of rates and charges, and subsequent acts

The Bill proposes to insert a new provisions in the LG Act and COB Act to validate rates and charges that were not levied by a resolution of the local government in accordance with the Acts.

The provisions declare that a rate or charge levied, or to be levied, by a local government under the Acts that was not decided to be levied by an express resolution at the local government's budget meeting are taken to be, and to always have been, validly levied as if the rates or charges had been decided by resolution at the budget meeting in accordance with the statutory requirements. The amendment proposes to validate rates and charges levied or to be levied up until 30 June 2018.²⁵

The provisions also declare that anything done, or to be done, in relation to the rate or charge is as valid 'as if the rates and charges themselves had been validly levied'²⁶ by the appropriate resolution at the local government's budget meeting for the financial year.²⁷

Examples of things 'done or to be done' in relation to the rate or charge include the local government seeking to recover unpaid rates or charges, charging interest, bringing a proceeding against a person, selling land or taking preparatory steps to sell the land, or acquiring land or taking preparatory steps to acquire land. The objective 'is to declare any of those subsequent steps taken are also valid'.²⁸

The proposed amendments operate retrospectively 'to provide financial surety to councils and to their ratepayers'.²⁹ To provide this surety the Bill validates any rate or charge, and anything done or to be done in relation to a rate or charge under the current legislation, the LG Act and COB Act, and relevant repealed legislation.³⁰

3.1.1 Issues raised during the inquiry

The committee received one submission from the LGAQ. The LGAQ advised that it had been consulted and 'supports the policy objectives of the Bill'.³¹

*The LGAQ is of the view that the proposed amendments are adequate and appropriate to reverse the possible impacts of the Supreme Court of Queensland decision, for Fraser Coast Regional Council and all other councils that have not passed rating resolutions in accordance with section 94(2) of the Local Government Act 2009.*³²

The LGAQ also advised that it is assisting councils to ensure future council resolutions fully comply with the legislative requirements regarding levying rates and charges, and is preparing template best practice resolutions that will be made available to all councils, and holding a 'Ratings Masterclass'.³³

Representatives from the department advised they have been working on the template budgets and resolutions with the LGAQ:

*...we will develop best practice tools that set out those mandatory requirements under the Local Government Act and Local Government Regulation for ratings so that they understand all of those elements and the importance of making sure that they tick all those boxes.*³⁴

²⁵ Bill, cls 3, 5; Department, public briefing transcript, Brisbane, 5 March 2018, p 2.

²⁶ Department, public briefing transcript, Brisbane, 5 March 2018, p 2.

²⁷ Bill, cls 3, 5; Explanatory notes, p 1.

²⁸ Bill, cls 3, 5; Department, public briefing transcript, Brisbane, 5 March 2018, p 2.

²⁹ Department, public briefing transcript, Brisbane, 5 March 2018, p 2.

³⁰ Bill, cls 3, 5; Department, public briefing transcript, Brisbane, 5 March 2018, p 2.

³¹ Submission 1, p 1.

³² Submission 1, p 1.

³³ Submission 1, p 1.

³⁴ Public briefing transcript, Brisbane, 5 March 2018, p 5.

However, the department advised that it does not have a role in the ongoing monitoring of local government budgets to ensure compliance with statutory requirements:

*We very much take the view that the council's budget is an operational matter for council and that there is not any state involvement in a council's budget... I do not see a role for the state in terms of auditing or ticking off or approving anything.*³⁵

Committee comment

The committee commends the LGAQ and the department for developing tools and templates that will assist local governments to meet the requirements for levying rates and charges under the LG Act and COB Act in the future.

The committee notes the department's advice that it does not have role 'in terms of auditing or ticking off or approving' budgets. However, given the current situation the committee recommends that the department monitor how local governments are levying their rates and charges, through a mechanism such as a desktop audit, 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.

Recommendation 2

The committee recommends that the Department of Local Government, Racing and Multicultural Affairs monitor 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.

³⁵ Department, public briefing transcript, Brisbane, 5 March 2018, p 3.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill, and brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Clauses 3 and 5 have the potential to raise the issue of whether the Bill has sufficient regard to the rights and liberties of individuals. These clauses propose to retrospectively validate rates and charges levied or to be levied, and declare that anything done, or to be done, in relation to the relevant rates or charges is valid as if the rate or charge were levied by appropriate resolution.

Legislation should not adversely affect rights and liberties, or impose obligations retrospectively;³⁶ strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

As the proposed amendments validate rates and charges levied, and things done in relation to the relevant rates or charges, before commencement of the proposed Act, these provisions operate retrospectively.

The explanatory notes recognise that the amendments will operate retrospectively, but state that the amendments have sufficient regard to the fundamental legislative principles ‘because of the need to provide financial surety to local governments and ratepayers’.³⁷

Committee comment

The committee notes the amendments in the Bill would operate retrospectively, and acknowledges the department’s advice that this is necessary to provide financial surety to local governments and ratepayers. Given the circumstances in which the need for the Bill has arisen and the consequent validating nature of the provisions, the committee considers the Bill’s retrospective effect is justified and the impact on the rights and liberties of individuals is appropriate in the circumstances.

4.2 Explanatory notes

Part 4 of the LS Act requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information the explanatory notes should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are reasonably detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

³⁶ LS Act, s 4(3)(g); Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles Notebook: Retrospectivity*, 19 June 2013, p 5.

³⁷ Explanatory notes, p 3.

Appendix A – Submitters

Sub #	Submitter
001	Local Government Association of Queensland

Appendix B – Witnesses at public briefing

Public briefing

5 March 2018

Department of Local Government, Racing and Multicultural Affairs

- Bronwyn Blagoev, Acting Deputy Director-General, Local Government and Regional Services
- Josie Hawthorne, Acting Director, Legislation Services
- Tim Dunne, Manager, Governance