



# ***ECONOMICS AND GOVERNANCE COMMITTEE***

**Members present:**

Mr LP Power MP (Chair)  
Ms NA Boyd MP  
Mr ST O'Connor MP  
Mr DG Purdie MP  
Ms KE Richards MP  
Mr RA Stevens MP

**Staff present:**

Ms T Struber (Acting Committee Secretary)  
Ms M Salisbury (Assistant Committee Secretary)

## **PUBLIC BRIEFING—INQUIRY INTO THE LOCAL GOVERNMENT LEGISLATION (VALIDATION OF RATES AND CHARGES) AMENDMENT BILL 2018**

### **TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 5 MARCH 2018**

**Brisbane**

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### **The committee met at 11.51 am.**

**CHAIR:** Good morning. I declare open this public briefing for the committee's inquiry into the Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018. I would like to acknowledge the traditional owners of the land on which we meet. My name is Linus Power. I am the member for Logan and chair of the committee. With me here today are: Ray Stevens, the deputy chair and member for Mermaid Beach; Nikki Boyd, the member for Pine Rivers; Sam O'Connor, the member for Bonney; Kim Richards, the member for Redlands; and Dan Purdie, the member for Ninderry.

On 15 February 2018 the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, the Hon. Stirling Hinchliffe, introduced this bill into parliament. The parliament has referred the bill to the Economics and Governance Committee for examination, with a reporting date of 15 March 2018. The purpose of the briefing is to assist the committee with its examination of the bill.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. I ask all those present to turn mobiles phones off or to switch them to silent.

Only the committee and invited officials may participate in the proceedings. As parliamentary proceedings under the standing orders any person may be excluded from the hearing at my discretion or by order of the committee. I remind committee members that officers from the department are here to give factual or technical information. Any questions about government or opposition policy should be directed to the responsible minister or shadow minister or left to debate on the floor of the House.

**BLAGOEV, Ms Bronwyn, Acting Deputy Director-General, Local Government and Regional Services, Department of Local Government, Racing and Multicultural Affairs**

**DUNNE, Mr Tim, Manager, Governance, Department of Local Government, Racing and Multicultural Affairs**

**HAWTHORNE, Ms Josie, Acting Director, Legislation Services, Department of Local Government, Racing and Multicultural Affairs**

**CHAIR:** We will now hear from the representatives of the Department of Local Government, Racing and Multicultural Affairs who have been invited to brief the committee on the bill. I invite you begin the briefing to the committee after which committee members will have some questions for you.

**Ms Blagoev:** Thank you for the opportunity to brief the committee on the Local Government Legislation (Validation of Rates and Charges) Amendment Bill. Today I am proposing to provide a bit of background around the legislation, the reasons the bill has come about and an analysis of the policy objectives. I am happy to take any questions as we go, if that pleases the committee.

I would like to take a little bit of time talking about what the local government legislation requires in terms of how councils pass a budget and how councils impose rates and charges, because it is very relevant to the current matter before us today. Section 94(2) of the Local Government Act specifically states that a local government must decide by resolution what rates and charges are to be levied for a financial year at the local government's budget meeting. Section 107A(1) of the Local Government Act then states—

A local government must consider the budget presented by the mayor and, by resolution, adopt the budget with or without amendment.

To summarise, a local government must do two things. Firstly, it must pass a resolution to levy rates and charges. Secondly, it must pass a resolution to adopt a budget. There are two resolutions. For the financial years ending 30 June 2015, 2016 and 2017 the Fraser Coast Regional Council, in Brisbane

accordance with section 107A of the Local Government Act, passed a resolution to adopt the budget. The budget then had a number of attachments as part of it. That included a schedule of rates and a revenue statement. The Fraser Coast Regional Council passed the budget resolution but did not then pass a separate resolution dealing with how it levies rates and charges. It passed one resolution but not two.

In the case of *Linville Holdings Pty Ltd v Fraser Coast Regional Council* the applicant argued that council failed to comply with the legislative requirements for levying rates and charges in a number of ways. For today's purposes, the applicant argued that the rates and charges were invalid because council failed to make a separate resolution to levy the rates and charges.

On 6 November 2017 the Supreme Court of Queensland delivered its judgement in that matter. The court declared that for each of the financial years ending 30 June 2015, 2016 and 2017 the council 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. The court found that the resolution to adopt the budget was not in itself enough to comply with the requirements in the Local Government Act for a separate resolution on rates and charges.

Although the court's declaration only applied in that case to Fraser Coast Regional Council, it is quite possible that other councils will also be affected. For that reason, the bill has three objectives. The first objective is to amend the City of Brisbane Act and the Local Government Act to validate rates and charges levied or to be levied up until 30 June 2018. The second is that it applies the validating provision to rates and charges made under repealed legislation—that is, the City of Brisbane Act 1924, the repealed Local Government Act 1993 and the repealed Local Government Act 1936. The third policy objective is to declare that anything done or to be done in relation to those rates and charges was done validly as if the rates and charges themselves had been validly levied. For example, council may have sought to recover unpaid rates or charges. It may have taken certain steps. It may have sold property. The objective of the bill is to declare that any of those subsequent steps taken are also valid.

The amendments do operate retrospectively. That has been done intentionally to provide financial surety to councils and to their ratepayers. I guess importantly from the department's perspective is to make sure that councils fully understand the effect of the *Linville* decision and fully understand that one resolution must be passed for the budget and one to levy rates and charges. To that end, the department is working with the Local Government Association of Queensland to provide further capacity building for councils so they have a very clear understanding of what is required to levy rates and charges and to ensure that this practice that was adopted by Fraser Coast Regional Council is not repeated for future financial years. We are happy to take any questions from the committee.

**CHAIR:** Thank you very much. Are there any questions?

**Mr STEVENS:** Does this legislation cover all charges that may have been levied such as specific area charges? I am not sure which councils, besides Fraser Coast Regional Council, are captured by the previous anomaly of that court decision? I refer to specific area charges like tourism charges, CBD redevelopment charges and local area charges. Is this going to capture those charges as well? There will be some people who will see an opportunity to say, 'Give me my money back.'

**CHAIR:** Presumably where they were incorporated into a budget, not necessarily—

**Mr STEVENS:** Yes, the charges have been issued by a rates notice. Rural fire levies, for instance, have been issued by a rates notice, collected and sent out to the body they were collected for.

**Ms Blagoev:** The bill seeks to validate any rates. What it will not capture is to seek to retrospectively validate every single charge adopted by a local government. For example, if a council had invalidly issued a special charge or a utility charge, it will not pick those up. It is focused on the exact scenario that Fraser Coast Regional Council faced.

**Mr STEVENS:** Are there other councils besides Fraser that the department is aware of that need this legislation?

**Ms Blagoev:** Yes. The department did a desktop audit by looking at how different councils levied their rates and charges. At this point in time, whilst I do not wish to pretend that the department's review was comprehensive, we have identified at least 25 local governments which levied their rates in exactly that same manner.

**Mr STEVENS:** Even this bill will not give substance to the collection by the council of those other charges?

**Ms Blagoev:** It will. Anyone who made a rate in accordance with that same methodology will be covered.

**Mr STEVENS:** It will? I thought you said it didn't but it does.

**Ms Blagoev:** There are some other items included in a council's budget. Some councils will levy a special charge.

**Mr STEVENS:** Special area charges.

**Ms Blagoev:** Yes. Some councils will do utility charges. This is not seeking to validate every single thing that may sit in a council's budget.

**Mr STEVENS:** So there still may be issues where councils have collected moneys without legal authority?

**Ms Blagoev:** This bill is about validating the situation that Fraser Coast found itself in in terms of rates. If there are councils that may have otherwise invalidly levied a charge, it will not pick up everything that sits in a budget document.

**Mr STEVENS:** Thank you.

**CHAIR:** Does section 94 make reference to a rates notice in particular or special area charges or other charges?

**Ms Blagoev:** Section 94 states—

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.

**CHAIR:** By special resolution.

**Ms Blagoev:** If you look at the wording of the bill, it specifically talks about validation of rates or charges. It states—

It is declared that the rate or charge is taken to be, and to always have been, as validly levied by the council as it would have been if the council had decided to levy the rate or charge by resolution at the council's budget meeting ...

**CHAIR:** So it reflects the language of section 94. Is a local government that has failed to fulfil section 94 required by resolution to in any way acknowledge that failure to do it?

**Ms Blagoev:** No. A local government is unable to go back and retrospectively validate any errors that may have been made in a rating resolution or a budget. Hence the bill has to come in over the top and do that for councils.

**CHAIR:** The original intent of section 94 was presumably—and correct me if I am wrong—to make clear to ratepayers the intent of the councils in levying those rates and charges; is that correct?

**Ms Blagoev:** That is correct. It is around transparency and accountability in terms of the rating resolution. We appreciate that budgets can be rather large, consisting of a large number of attachments. The fact that councils have to pass a separate resolution about their rates and charges does, in our opinion, make it more accountable and transparent for ratepayers.

**Ms BOYD:** Thank you for coming along and briefing the committee today. I acknowledge that this is retrospective and that there have been discussions with the LGAQ around what is required from councils in terms of their budgeting and their rates and charges into the future. Will there be mechanisms for compliance into the future? If so, what do they look like?

**Ms Blagoev:** There will be no legislative compliance in terms of an automatic trigger in the Local Government Act or the City of Brisbane Act which will automatically validate anything like this. It is really important that councils do understand their legislative responsibilities. The levying of rates is really important. It is what most ratepayers care about the most so it is really important that councils understand their obligations and do it properly. What the bill does not do is introduce some sort of mechanism if there is an error in future financial years to correct that automatically.

**Ms BOYD:** What about some kind of check and balance after budgets are passed through councils to check that it is done correctly so we do not end up in this kind of situation where annually we have to try to fix what has gone on?

**Ms Blagoev:** I appreciate that. 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. This is such an important matter for councils. It is important that councils own their budget and that it is done properly, but I do not see a role for the state in terms of auditing or ticking off or approving anything.

**Ms BOYD:** We just have to pass legislation when stuff like this happens into the future?

**Ms Blagoev:** Yes.

**Ms BOYD:** So fix up the mess that way.

**Mr STEVENS:** Obviously the chief executive officers of these councils are the ones who are responsible for putting together the budgets for council approval. You have something like 25 councils that have acted inappropriately perhaps. What ongoing methodology do you see the department engaging to make sure that the chief executive officers know their responsibility under the state act?

**Ms Blagoev:** Under the Local Government Act it is the role of the mayor to prepare and present the budget. I do take your point that it is very much the role of a CEO to assist the mayor and to guide the mayor through that process. Often the CEO is the one who has the operational knowledge to assist the mayor in that process so it is very, very important. Tim, do you have any specifics that you can offer on that point?

**Mr Dunne:** Currently the department and the Local Government Association of Queensland are working on template budgets and template resolutions that will be released to councils setting out best practice. It is not possible to do it for all 77 councils because every council is different and rates in different ways, but 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.

**CHAIR:** It is also what the act is by definition.

**Mr Dunne:** Yes.

**CHAIR:** There being no further questions, I will draw this briefing to a close. Thank you for the information you have provided today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's web page in due course. There are no questions on notice. I declare the public briefing into the committee's inquiry into the Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018 closed.

**The committee adjourned at 12.09 pm.**