

Mt. Gravatt Showgrounds Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Mt. Gravatt Showgrounds Amendment Bill 2011.

Policy objectives and the reasons for them

The objective of the legislation is to modernise nomination, selection and membership arrangements for the Mt Gravatt Showgrounds Trust (the trust) to ensure the membership may operate in accordance with the statutory objects of the trust.

The *Mt. Gravatt Showgrounds Act 1988* is essentially unchanged since its commencement. Since commencement, the diversity of activities conducted at the showgrounds has expanded to include a range of community, sporting and commercial uses.

The central policy objective of the Bill is to provide for representative, responsive and accountable governance arrangements in keeping with community values and expectations.

Achievement of policy objectives

To achieve its objectives, the Bill will:

1. promote a trust membership possessing skills, expertise and experience appropriate to the role of a member;
2. provide for nominations for appointment to include consideration of gender;
3. prohibit currently serving elected members of government sitting as a member, other than the local government elected member for the area in which the showgrounds are situated;

4. provide more contemporary criteria to be applied by the Minister in accepting nominations for appointment; and
5. revise penalties to reflect contemporary standards.

The membership is appointed to operate autonomously in satisfying its statutory objects, but periodically has requested the assistance of government in the performance of its functions. Relevantly, the *Mt. Gravatt Showgrounds Act 1988* fails to make provision for consideration of skills, expertise and experience of the members in nominations for appointment.

The reforms will be applied following commencement of the Bill. The membership will be dissolved and new appointments immediately recommended to the Governor-in-Council.

The Mt Gravatt Showgrounds By-Law 2001 (the By-law) is scheduled for repeal on 1 September 2012 by virtue of the *Statutory Instruments Act 1992*, section 54.

Subsection 25(1) provides that by-laws are made by the trust. The By-law will be remade or repealed prior to expiry following the appointment of new members.

Alternative ways of achieving policy objectives

The policy objectives are unable to be achieved other than through regulatory means.

The Bill will promote more effective operation of an important community facility.

Estimated cost for government implementation

The cost to government in implementing the Bill is negligible. There are no implications for Consolidated Revenue.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles. Possible intersections with fundamental legislative principles are addressed below.

Legislation has sufficient regard to the rights and liberties of individuals -*Legislative Standards Act 1992*, section 4(2)(a)

Clause 6 Insertion of new s.6A to 6F

Clause 6 requires the Brisbane City Council and the Mt Gravatt Show Society (society) to each nominate women and men for appointment.

The clause promotes the implementation of the Queensland Government's Women on Boards strategy which ensures that, where possible, 50 per cent of all new appointments to Queensland Government boards, councils and committees are women.

The reform would most likely be regarded as a special measure within the meaning of s.7D of the *Sex Discrimination Act 1984* (Commonwealth), and therefore not inconsistent with that Act. Similarly, it would likely be found to be a welfare measure within the meaning of s.104, or an equal opportunity measure under s.105, of the *Anti-Discrimination Act 1991*.

The reform is therefore considered justifiable in the circumstances. In the interests of certainty the operation of the *Anti-Discrimination Act 1991* will be excluded in this instance.

Legislation provides for the compulsory acquisition of property only with fair compensation - *Legislative Standards Act 1992*, section 4(3)(i)

Clause 17 Insertion of new pt 6

Clause 17, to the extent it inserts part 6, division 4, as a transitional measure provides without compensation for dissolution of the membership prior to expiry of the period of appointment of the members. Concerns are sometimes raised on provisions that terminate a person's holding of office and exclude compensation.

Trust members are not remunerated. In this case, removal from the trust will not cause appreciable detriment to the members. It is considered that the clause has sufficient regard to fundamental legislative principles.

Consultation

The trust, Brisbane City Council and the society were consulted prior to and following the development of reform proposals.

Under subsection 23(1), the society enjoys sole occupation of the showgrounds, free of charge, for a period of two weeks or other period agreed by the trust and the society for the purposes of conducting the annual show.

Brisbane City Council requested the Bill ensure that organisations possessing the right to occupation of the showgrounds under a lease or

other agreement, with the approval of the trust, are able to operate through the period of the show. This reform is reflected in the Bill.

Brisbane City Council further indicated a preference for its involvement in the administration of the trust and for membership composition to be maintained. The Bill provides for two Brisbane City Council representatives, preserving the current representation.

No stakeholder endorsed abolition of the ex-officio membership. While the Bill abolishes the role of the councillor for the electoral ward as ex-officio member, the Bill also provides that the councillor will be recommended for appointment as a member.

Stakeholders did not endorse a requirement to nominate men and women for appointment. Such a position is inconsistent with community expectations.

The society wished to maintain the membership composition, and opposed reduction of its membership. The Bill preserves society representation.

The reforms collectively support effective governance and a trust membership more representative of the community.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Clause 1 Short title

Clause 1 provides that the short title of the Act is the Mt. Gravatt Showgrounds Amendment Act 2011.

Clause 2 Commencement

Clause 2 states that clause 17, to the extent it inserts part 6, division 4, commences on a day to be fixed by proclamation. The remaining provisions commence at assent.

Clause 3 Act amended

Clause 3 provides that the Act amends the *Mt. Gravatt Showgrounds Act 1988*.

Clause 4 Amendment of s 4 (Interpretation)

Clause 4 amends the section heading, and inserts definitions for the purposes of new part 6.

Clause 5 Amendment of s.6 (Membership of trust)

Clause 5 amends subsection 6(1) to provide for a reformed trust membership.

The trust will continue to consist of seven members. The society will continue to be entitled to three members and Brisbane City Council to two members.

The Act amends subsection 6(1) to abolish the ex-officio entitlement to membership.

The clause further provides for membership to include two persons as representatives of Brisbane City Council. Brisbane City Council must nominate for appointment the local councillor for the electoral, who will be recommended for appointment in the same manner as other members.

The clause acknowledges the power of the Minister provided under sections 6C and 6D to recommend persons for appointment on behalf of Brisbane City Council or the society where the nominations of those organisations or offices are inconsistent with the requirements of the Bill.

The clause renumbers as required.

Clause 6 Insertion of new s.6A to 6F

Clause 6 inserts new section 6A to establish the criteria for nomination of persons for appointment.

The policy intent of the amendment is to provide requirements supporting effective governance and more reflective of community values and expectations. In particular, the clause implements the policy objective that nominations and appointments are based on consideration of the range of skills, expertise and experience of the members.

The clause also implements aspects of the Queensland Government's Women on Boards strategy which ensures that, where possible, 50 per cent of all new appointments to Queensland Government boards, councils and committees are women. The clause requires organisations and offices

entitled to membership, having regard to the need for balanced gender representation, to nominate men and women.

The clause inserts new section 6A providing that:

- (a) Brisbane City Council and the society must nominate persons for appointment at least three months prior to the date for expiry of existing appointments. This requirement will permit sufficient time for the administrative processes to prepare recommendations for the consideration of the Governor-in-Council.
- (b) Brisbane City Council and the society in nominating persons for appointment must:
 - a. have regard to the to the range of skills, expertise and experience necessary or desirable for members of the trust; and
 - b. having regard to the need for balanced gender representation in the membership of the trust, nominate men and women.

Brisbane City Council and the society may nominate a number of persons equal to or greater than the membership entitlement of their respective organisations. Persons may be external to those organisations or offices.

Section 6A also requires Brisbane City Council, notwithstanding section 6A(3)(b), to nominate the local councillor for the ward of Brisbane. The councillor will be recommended for appointment.

All members will be appointed by the Governor-in-Council.

The clause inserts new section 6B providing that an association or group representative of the community interest, in nominating a person for appointment upon the invitation of the Minister under subsection 6(3), is not limited in the number of persons it may nominate and must provide nominations in the time stated by the Minister.

Consistent with the requirements for Brisbane City Council and the society, the association or group upon the invitation of the Minister must, in providing a nomination:

- a. have regard to the to the range of skills, expertise and experience necessary or desirable for members of the trust; and
- b. having regard to the need for balanced gender representation in the membership of the trust, nominate men and women.

The clause inserts new section 6C to address the ramifications of delay in nominations, or a failure to nominate the councillor.

The clause provides that if Brisbane City Council or the society does not provide nominations at least three months prior to the date for expiry of existing appointments (consistent with new paragraph 6A(3)(a)), the Minister may on behalf of Brisbane City Council or the society select persons for appointment on behalf of those organisations or offices.

Where Brisbane City Council fails to nominate the councillor in the specified time, the Bill empowers the Minister to recommend the councillor for appointment.

The clause inserts new section 6D to address the ramifications of a failure to nominate persons consistent with the gender requirement of new subparagraph 6A(3)(b)(ii).

The clause empowers the Minister to refuse to recommend a person, and to recommend a person for appointment on behalf of Brisbane City Council or the society, where either organisation or office has failed to provide nominations consistent with the gender requirement.

The clause inserts new section 6E providing more contemporary criteria to be applied by the Minister in the selection of persons, or recommendation of persons, for appointment to the trust.

The policy intent of the amendment is to provide criteria more in keeping with the objective of efficient and effective governance of trust responsibilities.

As the *Mt. Gravatt Showgrounds Act 1988* stands, the Minister is obliged to recommend for appointment by the Governor-in-Council any person nominated, unless that person is disqualified under section 10, or the Minister considers the person “...on reasonable grounds not to be a fit and proper person to be so appointed” (s.9).

The clause provides that in accepting a nomination for appointment, the Minister must have regard to:

- a. the range of skills, expertise and experience necessary or desirable for members of the trust; and
- b. the need for balanced gender representation in the membership of the trust.

The clause inserts new section 6F. In the interests of certainty, the clause provides that an act done pursuant to ss.6A, 6B, 6D or 6E may not be construed as unlawful discrimination on the basis of sex within the meaning of the *Anti-Discrimination Act 1991*.

The clause further provides that the making of a decision or the doing of an act that is necessary to comply with, or is specifically authorised by, section 6A, 6B, 6D or 6E is not inconsistent with the *Anti-Discrimination Act 1991*.

Clause 7 Amendment of s.7 (Appointment of members of trust)

Clause 7 provides for minor amendments to section 7.

The Bill abolishes the role of the member ex-officio. The clause amends section 7 to remove reference to the member ex-officio.

Clause 8 Amendment of s.10 (Disqualification for membership of trust)

Clause 8 amends section 10 to provide an additional disqualification applying to membership.

In line with the policy objective of minimising potential for politicisation of trust affairs, the clause provides that a currently serving elected member of the Australian, State or local government is ineligible for appointment as a member, other than a councillor of Brisbane City Council for the ward of Brisbane in which the showgrounds is situated.

The clause further amends subsection 10(4) to revise the offence penalty applying to the situation where a person acts or attempts to act as a member when the person is disqualified for membership.

The penalty of 4 penalty units prescribed at subsection 10(4) was established at commencement. The clause increases the penalty for this offence to 10 penalty units.

The clause also amends the offence penalty under subsection 10(5) applying to the situation where a person has been convicted of acting or attempting to act as a member when disqualified, and continues to commit the offence.

The penalty of 1 penalty unit per day was established at commencement. The clause increases the penalty to 2 penalty units per day, and provides for a maximum total penalty of 20 penalty units.

The clause renumbers as required.

Clause 9 Replacement of s.11 (Vacating member's office)

Clause 9 replaces section 11.

The clause prescribes the situations in which a casual vacancy arises in the membership, including where the member is a councillor for the ward of Brisbane in which the showgrounds is situated and loses that elected office.

Clause 10 Amendment of s.12 (Removal from office)

Clause 10 makes a minor amendment to subsection 12(1) to omit reference to the member ex-officio, consistent with the revised membership.

Clause 11 Amendment of s.13 (Casual vacancies)

Clause 11 makes a minor amendment to subsection 13(1) to omit reference to the member ex-officio, consistent with the revised membership.

The clause clarifies generally the processes apply to the filling of a casual vacancy.

The clause inserts subsection 1A providing that where a member is the councillor for the ward of Brisbane and ceases to be the councillor, only the successor councillor may be nominated or recommended for appointment to fill the vacancy.

The filling of a casual vacancy, other than the vacation of the councillor, will be subject to the requirements applying to the nomination of persons for appointment, other than s.6A(3)(a), including the requirement that organisations or offices must nominate men and women.

The clause renumbers as required.

Clause 12 Insertion of new.13A (Appointment of chairperson of trust)

Clause 12 reforms the process for election of the chairperson.

Consistent with the policy intent that the chairperson is selected to represent the interests of the trust, independent from the influences of interest groups or party politics, the Bill requires the members to nominate persons for selection by the Minister of the chairperson.

Under section 14 of the Act, the trust may elect a chairperson. The Bill reforms this position to empower the Minister to select a chairperson from at least two members nominated by the trust. The trust must provide the Minister with the nominations within 14 days of the first meeting of a newly appointed membership, or first meeting following a vacancy in the office of the chairperson. The requirement will permit timely selection of the chairperson. The Minister must advise the trust by written notice of the selection.

Clause 13 Amendment of s.14 (Proceedings of trust)

Clause 13 makes a minor amendment to reflect that the trust will no longer be responsible for selecting the chairperson.

Clause 14 Amendment of s 21 (Powers of trust)

Clause 14 amends subsection 21(d) to clarify the obligations of the trust in entering into leases and other agreements for the use of the showgrounds or part of the showgrounds, with respect to the rights of the society to conduct the annual show under section 23.

While the society has a right to occupation of the showgrounds under section 23 for the purposes of conducting the annual show, the Bill confirms these rights are not necessarily exclusive.

The clause clarifies the obligation of the trust in entering into a lease or other agreement for the use of the showgrounds, or part of the showgrounds, to take into account the rights of users including the society under section 23. The clause further requires the trust to consult the society in entering into a lease or other agreement for a use coinciding with the period of the annual show.

Clause 15 Amendment of s.23 (Rights of society)

Clause 15 clarifies the society's right to occupation of the showgrounds in the two week period, or other period agreed with the trust, for the annual show provided under subsection 23(1).

Organisations other than the society (such as the Men's Shed and other entities under an agreement with the trust) possess the right to occupation of the showgrounds.

At the request of Brisbane City Council, the clause amends subsection 23(1) to clarify that the society does not possess sole right to occupation of the showgrounds in the period.

Consistent with clause 14, the clause inserts subsection (3) confirming that the society's right to occupation of the showgrounds under subsection (1) is subject to a right granted by the trust to an entity, other than the society, under subsection 21(d).

Clause 16 Amendment of s.25 (By-laws)

Clause 16 revises the maximum penalty which may be applied to an offence under the Mt. Gravatt Showgrounds By-law 2001.

Subsection 25(2) provides a by-law may impose a penalty not exceeding 4 penalty units in respect of a breach of a by-law. This maximum level of

penalty was established at commencement and has not been revised. The Bill, consistent with contemporary standards, provides that a by-law offence penalty may not exceed 10 penalty units.

The maximum level of penalty to be available to by-law offences has been determined with regard to penalties for similar offences under the *Land Regulation 2009* Schedule 1, Part 2 model by-laws applying to reserves for a community purpose.

Clause 17 Insertion of part 6 - Transitional.

Clause 17 inserts part 6 (Divisions 1 to 4) containing the transitional provisions sections 29 to 34.

The membership will be dissolved at a date to be notified by proclamation and new appointments recommended to the Governor-in-Council on the basis of reformed nomination and selection criteria and processes. Part 6 preserves certain rights of members and entities, and governs the processes applying to nomination of persons prior to dissolution of the membership.

New s.29 defines '*commencement*' and '*pre-amended Act*' for the purposes of part 6.

New s.30 continues in office the members of the trust until the membership is dissolved under section 34.

New s.31 continues in office the chairperson and deputy chairperson of the trust until the membership is dissolved under section 34.

New s.32 confirms that continuation in office is subject to s.12 (Removal from office).

New Division 3 confirms that the government may take action to appoint new trust members, prior to the dissolution of the existing trust membership. This division clarifies that the appointment of members prior to dissolution day takes effect on the dissolution day.

The clause inserts division 4 containing s.34, a transitional provision to be commenced by proclamation dissolving the current membership.