

Local Government (Dissolution of Ipswich City Council) Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Local Government (Dissolution of Ipswich City Council) Bill 2018.

Policy objectives and the reasons for them

Since June 2017, a number of Ipswich City councillors, council employees and council contractors have been charged by the Crime and Corruption Commission with a variety of misconduct and corruption offences.

On 14 August 2018, the Crime and Corruption Commission's (CCC) report '*Culture and Corruption Risks in Local Government: Lessons from an investigation into Ipswich City Council*' was Tabled in Parliament. The report states that the investigation identified significant governance failures and cultural issues that appear to have been occurring over many years and which would not have occurred in an environment in which the values of transparency, accountability and good governance were paramount.

These events have raised concerns about the administration and operations of the Ipswich City Council (ICC). The policy objectives of the Local Government (Dissolution of Ipswich City Council) Bill 2018 (the Bill) are to resolve those concerns promptly and to provide the Ipswich community with certainty by dissolving the ICC and providing for the appointment of an interim administrator to act in place of the ICC councillors for an interim period ending at the conclusion of the quadrennial election for the Ipswich Local Government area held in 2020.

The Bill will not prevent the ICC councillors from nominating as a candidate, or for appointment, as a councillor at an election for any local government (including a by-election or fresh election) from commencement.

Achievement of policy objectives

To achieve the policy objectives the Bill provides that:

- the Act commences on a day to be fixed by proclamation
- the ICC is dissolved on the commencement
- each ICC councillor's term of office ends on the commencement
- if an ICC councillor was, immediately before the commencement, suspended under the *Local Government Act 2009* (LGA), chapter 6, part 2, division 7, the councillor's suspension ends when the councillor's term ends

- the ending of the term of office of an ICC councillor does not give rise to a vacancy in the office of the councillor for the LGA chapter 6, part 2, division 3
- an **ICC councillor** is a person who, immediately before the commencement of section 4 of the Act, held office as a councillor, including as mayor, of the ICC
- the Governor in Council must appoint a person (the **interim administrator**) to act in place of the councillors of the ICC for the interim period
- the Governor in Council must publish the name of the interim administrator by gazette notice
- the **interim period** is the period starting when the interim administrator is appointed and ending at the conclusion of the quadrennial election of councillors for the Ipswich local government area held in 2020
- the Governor in Council may limit the responsibilities and powers of the interim administrator
- if there is a vacancy in the office of the interim administrator, or if the interim administrator is absent or can not perform the duties of interim administrator, the Minister may appoint a person to act as interim administrator until the Governor in Council appoints a new interim administrator. This would allow the Minister to appoint an acting interim administrator where for example, the appointed interim administrator is unwell and is unable to temporarily perform the functions of the interim administrator. Alternatively, if the interim administrator is unable to continue in the role, the Minister could appoint an acting interim administrator until such time as a new interim administrator is appointed by Governor in Council
- the Minister must publish, by gazette notice, the name of the acting interim administrator
- the Minister may limit the responsibilities and powers of the acting interim administrator
- a decision of the Governor in Council or the Minister under section 5 of the Act is not reviewable unless the Supreme Court decides the decision is affected by jurisdictional error
- the relevant LGA provisions (section 124, other than section 124(1), 124(3) and 124(5); chapter 6, part 7; and sections 235 and 236(1)) apply in relation to the interim administrator as if—
 - the interim administrator were an interim administrator under the LGA; and
 - for the LGA, section 236(1)—the interim administrator were the head of the ICC
- if the interim administrator is a corporation then references to the interim administrator in certain legislative provisions includes a reference to an individual authorised by the corporation to act on its behalf
- the costs and expenses of the interim administrator include the costs and expenses of an advisory committee or an interim management committee
- the protection from liability for local government administrators who act honestly and without negligence in section 235 of the LGA applies to members of an advisory committee or interim management committee as if the members were ‘local government administrators’ under that section
- the LGA and other Acts apply to the interim administrator, with all necessary changes, and any changes prescribed by regulation, as if the interim administrator were the ICC
- the Governor in Council may make regulations under this Act which may have a retrospective operation to a day not earlier than the day of commencement. A regulation may provide for any matter for which it is necessary or convenient to provide in order to assist or enable the interim administrator to act in place of the councillors of the ICC for the interim period
- the Act expires on 30 June 2020.

This way of achieving the policy objectives is reasonable and appropriate to urgently resolve concerns relating to ICC and to bring stability and certainty to the Ipswich community.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

There are no anticipated costs associated with implementation.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles set out in the *Legislative Standards Act 1992* (LSA). Potential breaches of the fundamental legislative principles are addressed below.

Consistency with the principle of natural justice

The Bill does not provide affected councillors with the opportunity to be heard or give submissions before the dissolution takes effect, their term ends and the interim administrator is appointed. This constitutes a potential breach of the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals (LSA section 4(2)(a)). Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice (LSA section 4(3)(b)).

Although it cannot be denied that legislation which proposes the dissolution of ICC, will, if passed, have an immediate and significant effect on the councillors, the councillors of ICC are not entitled under law, to be afforded procedural fairness by the Parliament before legislation is passed. The ICC councillors attended before the Parliamentary Economics and Governance Committee during its consideration of the draft Bill and as part of this, were provided with an opportunity to be heard and to give submissions in relation to the draft Bill. The current circumstances in the Ipswich local government area are extraordinary and demand an immediate and swift response, particularly in light of the CCC's report '*Culture and Corruption Risks in Local Government: Lessons from an investigation into Ipswich City Council*'. It is considered that the ICC councillors have been provided with an opportunity to be heard before the Committee and no further opportunity is warranted in the circumstances.

Administrative power should be subject to appropriate review

The Bill does not provide for a review or appeal process in relation to a decision to appoint an interim administrator or acting interim administrator to act in place of the former councillors. This constitutes a potential breach of the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals (LSA section 4(2)(a)). Whether the legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (LSA section 4(3)(a)).

Clause 6 of the Bill seeks to remove any right to judicial review of a decision of the Governor in Council or the Minister under clause 5 of the Bill. It is open to the Parliament to limit review of an administrative decision if the circumstances justify the limitation.

It is considered that the situation at Ipswich City Council, given the longstanding and growing governance and corruption concerns, merits a decisive approach to ensure future stability for the community. The Bill reflects this need for community certainty in Ipswich, providing the community with confidence that the Council is operating in a manner which reflects sound decision-making and strong governance and integrity. It is anticipated that the decisive nature of the Bill will support business confidence in Ipswich and will restore community confidence generally. Accordingly, whilst it is acknowledged that there is a potential breach of this fundamental legislative principle, it is warranted given the extraordinary circumstances currently facing the Council.

Rights and liberties of individuals generally

The Bill provides that each ICC Councillor's term of office ends on the commencement of the Act (clause 4 of the Bill). The dissolution of the Council will impact on all Councillors irrespective of whether allegations or charges have been made against all of them. The Bill does not contemplate any compensation for former Councillors.

This constitutes a potential breach of the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals (LSA section 4(2)(a)). Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation provides for the compulsory acquisition of property only with fair compensation (LSA section 4(3)(i)) and the legislation should be reasonable and fair in its treatment of individuals and should not be discriminatory.

The dissolution of the Council will impact all Councillors. The concerns of the Parliament, however, should go beyond the interests of individual Councillors as the Parliament seeks a comprehensive solution in response to serious governance, ethical and cultural concerns. It is considered that the ongoing and growing concerns regarding the performance of the Council merits a legislative solution to address these serious concerns and to provide certainty to the Ipswich City community.

This is particularly the case given the CCC's report '*Culture and Corruption Risks in Local Government: Lessons from an investigation into Ipswich City Council*' which identified significant governance failures and cultural issues that appear to have been occurring over many years and which would not have occurred in an environment in which the values of transparency, accountability and good governance were paramount. The potential breach of the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals is deemed justified in light of the identified systemic cultural concerns. The Bill allows for a "re-set" in the culture of the ICC moving forward, with a renewed focus on strong transparency and accountability.

Delegation of legislative power and retrospectivity

The Bill provides that the Governor in Council may make a regulation under the Act (clause 8 of the Bill). A regulation may provide for any matter for which it is necessary or convenient to provide in order to assist or enable the interim administrator to act in place of the Councillors of the ICC for the interim period. Clause 7(5) also provides that a regulation may provide for

how the LGA and other Acts apply to the interim administrator as if the administrator were the ICC.

The fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament (LSA section 4(2)(b)). Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons (LSA section 4(4)(a)); sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (LSA section 4(4)(b)); and authorises the amendment of an Act only by another Act (LSA section 4(4)(c)).

The Bill will enable an immediate legislative response to resolve concerns about the administration and operations of ICC and to provide certainty to the Ipswich community. The power to make a regulation about how the LGA and other Acts apply to the interim administrator or other matters that are necessary or convenient to provide for will facilitate a timely response to issues that may arise once the interim administrator commences operation. For example, it may be necessary to provide for procedural requirements in relation to the preparation and approval of the budget by the interim administrator. Any regulation made under the Act will expire on 30 June 2020 when the Act expires.

A regulation, if made, will ensure that the delegated legislative power is sufficiently subject to scrutiny of the Legislative Assembly under the *Statutory Instruments Act 1992*, including the disallowance procedures.

Clause 8 of the Bill also provides that a regulation may have retrospective operation to a day that is not earlier than the commencement. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively (LSA section 4(3)(g)). It is considered that a retrospective regulation made under this head of power will not have a significant adverse impact on the rights of individuals or impose obligations retrospectively, but will, if necessary, clarify how the LGA or other Acts apply to the interim administrator from the time of appointment.

Immunity from proceeding or prosecution

Clause 7(1) and (6) (definition of *relevant LGA provisions* para (c)) apply section 235 of the LGA (Administrators who act honestly and without negligence are protected from liability) to the interim administrator as if the interim administrator were an interim administrator under the LGA. Clause 7(4) of the Bill applies section 235 of the LGA to the members of an advisory committee or an interim management committee as if the reference in that section to a local government administrator includes a reference to the member. Accordingly, the interim administrator and a member of an advisory committee or interim management committee will be a “local government administrator” for the purposes of section 235(3). The effect of this is that civil liability attaching to the administrator or a member instead attaches to Ipswich City Council.

Section 4(3)(h) of the LSA requires consideration of whether legislation confers immunity from proceeding or prosecution without adequate justification.

The effect of clause 7 of the Bill is to provide the interim administrator and a member of an advisory committee or an interim management committee with immunity for civil liability but it does not prevent an affected party from seeking legal redress from the Ipswich City Council, for whom liability attaches under section 235(5) of the LGA. Further, the immunity does not extend to liability for dishonesty or negligence. This approach is consistent with the protection already afforded to an interim administrator under the LGA and is justified on the basis that the role of the member is to help the interim administrator perform his or her functions for council. While actions taken in carrying out statutory functions normally do not attract liability, these provisions will assure the interim administrator and members that the immunity is in place. It is deemed that the offering of the immunity is justified in these extraordinary circumstances.

Consultation

The Local Government Association of Queensland was consulted under section 77 of the *Constitution of Queensland 2001*.

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 Act may be cited as the *Local Government (Dissolution of Ipswich City Council) Act 2018*.

Clause 2 Commencement

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Clause 3 Definitions

Clause 3 defines the following terms for the purposes of the Act:

conclusion, of the election of a councillor, see the *Local Government Electoral Act 2011*, section 7

councillor means a councillor of a local government under the *Local Government Act 2009*

ICC councillor means a person who, immediately before the commencement of section 4, held office as a councillor, including as mayor, of the Ipswich City Council

interim administrator see section 5(1)

interim period means the period—

- starting when the interim administrator is appointed under section 5(1); and
- ending at the conclusion of the quadrennial election of councillors for the Ipswich local government area held in 2020.

quadrennial election see the *Local Government Electoral Act 2011*, schedule.

Clause 4 Dissolution of Ipswich City Council and end of term of ICC councillors

Clause 4 provides that on the commencement—

- the Ipswich City Council is dissolved; and
- despite the *Local Government Act 2009*, section 160, each ICC councillor's term ends.

Subclause (2) clarifies that if an ICC councillor was, immediately before the commencement, suspended under the *Local Government Act 2009*, chapter 6, part 2, division 7, the suspension ends when the councillor's term ends under this section.

Subclause (3) provides that the ending of the term of an ICC councillor does not give rise to a vacancy in the office of the councillor for the *Local Government Act 2009*, chapter 6, part 2, division 3.

Clause 5 Appointment of interim administrator

Clause 5 provides that the Governor in Council must appoint a person (the **interim administrator**) to act in place of the councillors of the Ipswich City Council for the interim period.

Subclause (2) provides that the Governor in Council must publish the name of the interim administrator by gazette notice.

Subclause (3) provides that the Governor in Council may, in the interim administrator's instrument of appointment, limit the responsibilities and powers of the interim administrator.

Subclause (4) provides that subsection (5) applies if there is a vacancy in the office of the interim administrator, or the interim administrator is absent or can not perform the duties of interim administrator.

Subclause (5) provides that the Minister may appoint a person to act as interim administrator until the Governor in Council appoints a new interim administrator under this section.

Subclause (6) provides that the Minister must publish, by gazette notice, the name of the acting interim administrator.

Subclause (7) provides that the Minister may, in the acting administrator's instrument of appointment, limit the responsibilities and powers of the acting interim administrator.

Clause 6 Decisions not reviewable

Clause 6 provides that unless the Supreme Court decides that a decision of the Governor in Council or Minister under section 5 (Appointment of interim administrator) is affected by jurisdictional error, the decision—

- is final and conclusive; and
- can not be challenged, appealed against, reviewed, quashed, set aside or called into question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

Clause 7 Application of the *Local Government Act 2009* and other Acts

Clause 7 provides that the relevant LGA provisions apply in relation to the interim administrator as if—

- the interim administrator were an interim administrator under the *Local Government Act 2009*; and
- for the *Local Government Act 2009*, section 236(1)—the interim administrator were the head of the Ipswich City Council.

Subclause (2) clarifies that if the interim administrator is a corporation, a reference in subsection (1)(b) or the *Local Government Act 2009*, section 205(3) or (4) to the interim administrator includes a reference to an individual authorised by the corporation to act on its behalf.

Subclause (3) provides that, for the *Local Government Act 2009*, section 124(6), the costs and expenses of the interim administrator includes the costs and expenses of—

- an advisory committee created under the *Local Government Act 2009*, section 124(10); or
- a committee appointed for the interim administrator under the *Local Government Act 2009*, chapter 6, part 7.

Subclause (4) provides that the *Local Government Act 2009*, section 235 applies to a member of a committee mentioned in subsection (3) as if a reference in that section to a local government administrator included a reference to the member.

Subclause (5) provides that the *Local Government Act 2009* and other Acts apply to the interim administrator, with all necessary changes, and any changes prescribed by regulation, as if the interim administrator were the Ipswich City Council.

Subclause (6) defines *relevant LGA provisions* for the purpose of the clause.

relevant LGA provisions means the following provisions of the *Local Government Act 2009*—

- section 124, other than section 124(1), (3) and (5);
- chapter 6, part 7;
- sections 235 and 236(1).

Relevant LGA provisions

The relevant *Local Government Act 2009* provisions are provided below for information.

124 Interim administrator acts for the councillors temporarily

~~(1) This section applies if an interim administrator is appointed to act in place of the councillors of a local government.~~

(2) The interim administrator has all the responsibilities and powers of—

- (a) the local government; and
- (b) the mayor.

~~(3) However, a regulation may limit the responsibilities and powers of the interim administrator.~~

(4) The interim administrator must exercise power under the name of ‘interim administrator of the (name of the local government)’.

~~(5) This Act and other Acts apply to the interim administrator, with all necessary changes, and any changes prescribed under a regulation, as if the interim administrator were the local government.~~

(6) The Governor in Council may direct a local government for which an interim administrator is appointed to pay to the Minister an amount specified in the direction for the costs and expenses of the interim administrator.

(7) The specified amount may include the salary and allowances payable to an officer of the public service who is appointed as interim administrator.

(8) The direction may specify a time for payment.

(9) The specified amount is a debt payable to the State.

(10) The Minister may create an advisory committee to give the interim administrator advice about the performance of the local government’s responsibilities.

Chapter 6, Part 7 Interim management (sections 205-207)

205 Interim management committee

(1) When an interim administrator is appointed for a local government, the Minister may appoint a committee of persons to help the interim administrator to perform the interim administrator’s responsibilities.

(2) A person may be appointed as a member of a committee for a limited time or indefinitely.

(3) The interim administrator is chairperson of the committee and must preside at every meeting of the committee at which the interim administrator is present.

(4) If, because of absence or incapacity, the interim administrator can not perform the responsibilities of chairperson of the committee, the other members of the committee must appoint another member to act as chairperson.

206 Conditions of appointment as interim administrator or member of committee

(1) An interim administrator or a member of a committee is entitled to the fees, allowances and expenses decided by the Governor in Council.

(2) An officer of the public service who is appointed as an interim administrator, or as a member of a committee, may hold the appointment as well as the public service office.

207 End of appointment of interim management

A person stops being an interim administrator, or a member of an interim management committee—

(a) if the person resigns by signed notice of resignation given to the department's chief executive; or

(b) if the Governor in Council, for any reason, cancels the person's appointment; or

(c) at the conclusion of a fresh election of the councillors of the local government.

235 Administrators who act honestly and without negligence are protected from liability

(1) A State administrator or local government administrator is not civilly liable for an act done under this Act or the Local Government Electoral Act, or omission made under this Act or the Local Government Electoral Act, honestly and without negligence.

(2) A *State administrator* is—

(a) the Minister; or

(b) the department's chief executive; or

(c) an authorised officer; or

(ca) the assessor; or

(cb) an investigator; or

(cc) a member of the conduct tribunal; or

(d) a member of the change commission; or

(e) a member of the grants commission; or

(f) a member of a regional conduct review panel; or

(g) a member of the tribunal; or

(h) a person acting under the direction of a person mentioned in paragraph (a), (b) or (c); or

(i) an advisor or financial controller.

(3) A *local government administrator* is—

(a) a councillor; or

(b) the chief executive officer; or

(c) an authorised person; or

(d) another local government employee; or

(e) an interim administrator.

(4) If subsection (1) prevents civil liability attaching to a State administrator, liability attaches instead to the State.

(5) If subsection (1) prevents civil liability attaching to a local government administrator, liability attaches instead to the local government.

(6) A joint local government, or any member of the joint local government, is not civilly liable for an act done under this Act, or omission made under this Act, honestly and without negligence.

(7) If subsection (6) prevents civil liability attaching to a member of a joint local government, liability attaches instead to the local government for which the member is a councillor.

(8) The protection given under this section is in addition to any other protection given under another law or Act including, for example, the *Public Interest Disclosure Act 2010* and the *Public Service Act 2008*.

236 Who is authorised to sign local government documents

(1) The following persons may sign a document on behalf of a local government—

(a) the head of the local government;

(b) a delegate of the local government;

(c) a councillor or local government employee who is authorised by the head of the local government, in writing, to sign documents.

Note—

See section 257 for the local government's power to delegate.

Clause 8 Regulation-making power

Clause 8 provides that the Governor in Council may make regulations under this Act.

Subclause (2) provides that a regulation may provide for any matter for which it is necessary or convenient to provide in order to assist or enable the interim administrator to act in place of the councillors of the Ipswich City Council for the interim period.

Subclause (3) provides that a regulation made under this Act may have retrospective operation to a day not earlier than the commencement.

Clause 9 Expiry

Clause 9 provides that the Act expires on 30 June 2020.